8–21–09 Friday
Vol. 74 No. 161 Aug. 21, 2009

Pages 42169–42572

Federal Register

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 74 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 15, 2009
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Contents

Federal Register

Vol. 74, No. 161

Friday, August 21, 2009

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 74, No. 161
Friday, August 21, 2009

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AL81

Prevailing Rate Systems; Redefinition of the Lake Charles-Alexandria and New Orleans, LA, Appropriated Fund Federal Wage System Wage Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is issuing a final rule to redefine the geographic boundaries of the Lake Charles-Alexandria and New Orleans, LA, appropriated fund Federal Wage System (FWS) wage areas. The final rule redefines Iberia and St. Martin Parishes, LA, from the New Orleans wage area to the Lake Charles-Alexandria wage area. These changes are based on consensus recommendations of the Federal Prevailing Rate Advisory Committee (FPRAC) to best match the counties proposed for redefinition to a nearby FWS survey area. FPRAC recommended no other changes in the geographic definitions of the Lake Charles-Alexandria and New Orleans wage areas.

DATES: This regulation is effective on September 21, 2009.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; e-mail *pay-performance-policy@opm.gov;* or FAX: (202) 606–4264.

SUPPLEMENTARY INFORMATION: On March 9, 2009, the U.S. Office of Personnel Management (OPM) issued a proposed rule (74 FR 9967) to redefine Iberia and St. Martin Parishes, LA, from the New Orleans, LA, wage area to the Lake Charles-Alexandria, LA, wage area. These changes are based on consensus recommendations of the Federal Prevailing Rate Advisory Committee. The proposed rule had a 30-day comment period, during which OPM received no comments.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of Information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

John Berry,

Director.

■ Accordingly, the U.S. Office of Personnel Management amends 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. In appendix C to subpart B, the wage area listing for the State of Louisiana is amended by revising the listings for Lake Charles-Alexandria and New Orleans, to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

LOUISIANA

Lake Charles-Alexandria

Survey Area

Louisiana: Allen, Beauregard, Calcasieu, Grant, Rapides, Sabine, Vernon

Area of Application. Survey Area Plus

Louisiana: Acadia, Avoyelles, Caldwell, Cameron, Catahoula, Concordia, Evangeline, Franklin, Iberia, Jefferson Davis, Lafayette, La Salle, Madison, Natchitoches, St. Landry, St. Martin, Tensas, Vermilion, Winn

New Orleans

Survey Area

Louisiana: Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany

Area of Application. Survey Area Plus

Louisiana: Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Lafourche, Livingston, Pointe Coupee, St. Helena, St. James, St. Mary, Tangipahoa, Terrebonne, Washington, West Baton Rouge, West Feliciana

* * * * *

[FR Doc. E9–20049 Filed 8–20–09; 8:45 am]
BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AL82

Prevailing Rate Systems; Redefinition of the Boise, ID, and Utah Appropriated Fund Federal Wage System Wage Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is issuing a final rule to redefine the geographic boundaries of the Boise, ID, and Utah appropriated fund Federal Wage System (FWS) wage areas. The final rule redefines Franklin County, ID, from the Boise wage area to the Utah wage area. These changes are based on consensus recommendations of the Federal Prevailing Rate Advisory Committee (FPRAC) to best match the counties proposed for redefinition to a nearby FWS survey area. FPRAC recommended no other changes in the geographic definitions of the Boise and Utah FWS wage areas.

DATES: This regulation is effective on September 21, 2009.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; e-mail *pay-performance-policy@opm.gov*; or *Fax:* (202) 606–4264.

SUPPLEMENTARY INFORMATION: On March 9, 2009, the U.S. Office of Personnel Management (OPM) issued a proposed rule (74 FR 9968) to redefine Franklin County, ID, from the Boise, ID, wage area to the Utah wage area. These changes are based on consensus recommendations of the Federal Prevailing Rate Advisory Committee. The proposed rule had a 30-day comment period, during which OPM received no comments.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of Information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

John Berry,

Director

■ Accordingly, the U.S. Office of Personnel Management amends 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. Appendix C to subpart B is amended by revising the wage area listings for the Boise, ID, and Utah wage areas to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

IDAHO

Boise

Survey Area

Idaho:
Ada
Boise
Canyon
Elmore
Gem

Area of Application. Survey Area Plus:

Idaho:
Adams
Bannock
Bear Lake
Bingham
Blaine
Bonneville
Butte
Camas
Caribou
Cassia
Clark
Custer
Fremont
Gooding
Jefferson
Jerome
Lemhi
Lincoln
Madison
Minidoka
Oneida
Owyhee
Payette
Power
Teton
Twin Falls
Valley
Washington

* * * * *

UTAH

Survey Area

Utah:
Box Elder
Davis
Salt Lake
Tooele
Utah
Weber

Area of Application. Survey Area Plus

Utah:
Beaver
Cache
Carbon
Daggett
Duchesne
Emery
Garfield
Grand
Iron
Juab
Millard
Morgan
Piute
Rich
San Juan (Only includes the Canyonlands National Park portion.)
Sanpete
Sevier
Summit
Uintah
Wasatch
Washington
Wayne
Colorado:
Mesa
Moffat
Idaho:
Franklin

* * * * *

[FR Doc. E9–20094 Filed 8–20–09; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1415

RIN 0578–AA53

Grassland Reserve Program; Amendment

AGENCY: Commodity Credit Corporation (CCC), United States Department of Agriculture.

ACTION: Interim final rule; amendment with reopening of comment period.

SUMMARY: The United States Department of Agriculture (USDA), through the Commodity Credit Corporation (CCC), published in the **Federal Register** of January 21, 2009, an interim final rule with request for comment amending the program regulations for the Grassland Reserve Program (GRP) to incorporate programmatic changes authorized by the Food, Conservation, and Energy Act of 2008 (2008 Act) using Regulation Identification Number (RIN) 0578–AA38. This amendment to the January 21, 2009, interim final rule corrects the RIN to read 0578–AA53, clarifies the nature of the contingent right of enforcement, expands its discussion regarding GRP policy for wind and solar power facilities, and requests comment on how GRP can be used to contribute to the Nation's efforts on energy, climate change, and carbon sequestration. Additionally, USDA seeks public input on the January 21, 2009, interim final rule, as amended. Therefore, USDA reopens the public comment period upon publication of this amendment until September 21, 2009.

DATES: *Effective Date:* The rule is effective August 21, 2009. *Comment date:* Submit comments on or before September 21, 2009. In addition, the comment period for the GRP interim final rule published on January 21, 2009 (74 FR 2317), is reopened. Comments must be received on or before September 21, 2009.

ADDRESSES: You may send comments (identified by Docket Number NRCS–IFR–09005) using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending comments electronically.
- *Mail:* John Glover, Acting Director, Easements Programs Division, Department of Agriculture, Natural Resources Conservation Service, Grasslands Reserve Program Comments, PO Box 2890, Washington, DC 20013.
- *E-mail: grp2008@wdc.usda.gov.*
- *Fax:* (202) 720–9689.
- *Hand Delivery:* USDA South Building, 1400 Independence Avenue, SW., Room 6819, Washington, DC 20250, between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. Please ask the guard at the entrance to the South Building to call (202) 720–4527 in order to be escorted into the building.
- This interim final rule may be accessed via Internet. Users can access the Natural Resources Conservation Service (NRCS) homepage at: *http://www.nrcs.usda.gov/*; select the Farm Bill link from the menu; select the Interim Final Rules link from beneath the Final and Interim Final Rules Index title. Persons with disabilities who require alternative means for communication (Braille, large print,

audio tape, *etc.*) should contact the USDA Target Center at: (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: John Glover, Acting Director, Easement Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6819 South Building, Washington, DC 20250; *Phone:* (202) 720–1854; *Fax:* (202) 720–9689; or *e-mail: grp2008@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Regulatory Certifications

Executive Order 12866

The Office of Management and Budget (OMB) reviewed the January 21, 2009, interim final rule and determined that it was a significant regulatory action. Pursuant to Executive Order 12866, USDA conducted a cost-benefit analysis of the potential impacts associated with the interim final rule for the GRP published in the **Federal Register** on January 21, 2009. OMB also determined that this amendment is a significant regulatory action. USDA evaluated the cost-benefit analysis and determined the provisions of the amendment do not alter the analysis that was originally prepared for the January 21, 2009, interim final rule. The administrative record is available for public inspection at the Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5831 South Building, Washington, DC. A copy of the analysis is available upon request from John Glover, Acting Director, Easement Programs Division, Department of Agriculture, Natural Resources Conservation Service, Room 6819 South Building, Washington, DC 20250–2890 or electronically at: *http://www.nrcs.usda.gov/programs/GRP/* under the Program Information title.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this interim final rule because USDA is not required by 5 U.S.C. 553, or by any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Analysis

A programmatic Environmental Assessment (EA) has been prepared in association with the interim final rulemaking published on January 21, 2009. The provisions of this amendment do not alter the assessment that was originally prepared. With the exception for the analysis on how to address windmill and other renewable sources of energy, such as solar panel arrays, there is nothing in this amendment that impacts the program's purpose, the baseline considerations, grassland eligibility, or acreage enrollment goals. This amendment was developed to address the contingent right of enforcement and where the energy produced from windmills authorized to be placed on easement lands can be used. Therefore, the analysis has determined that there will not be a significant impact to the human environment and, as a result, an Environmental Impact Statement (EIS) is not required to be prepared (40 CFR part 1508.13). The EA and Finding of No Significant Impact (FONSI) are available for review and comment as specified in the interim final rule published in the **Federal Register** on January 21, 2009. However, the comment period for accepting comments to the EA and FONSI has been extended to September 21, 2009. A copy of the EA and FONSI may be obtained from the following Web site: *http://www.nrcs.usda.gov/programs/Env_Assess.* A hard copy may also be requested from the following address and contact: Matt Harrington, National Environmental Coordinator, Ecological Sciences Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Ave., SW., Washington, DC 20250. Comments from the public should be specific and reference that comments provided are on the EA and FONSI. Public comments may be submitted by any of the following means: (1) E-mail comments to: *NEPA2008@wdc.usda.gov*, (2) e-mail to e-gov Web site: *www.regulations.gov*, or (3) written comments to: Matt Harrington, National Environmental Coordinator, Ecological Sciences Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Ave., SW., Washington, DC 20250.

Civil Rights Impact Analysis

USDA has determined through a Civil Rights Impact Analysis that the January 21, 2009, interim final rule disclosed no disproportionately adverse impacts for minorities, women, or persons with disabilities. The provisions of this amendment do not alter the analysis that was originally prepared. Copies of the Civil Rights Impact Analysis are available from John Glover, Acting Director, Easement Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Washington, DC 20250, or electronically at: *http://www.nrcs.usda.gov/programs/GRP.*

Paperwork Reduction Act

Section 2904 of the 2008 Act requires that the implementation of this provision be carried out without regard to the Paperwork Reduction Act, chapter 35 of Title 44, U.S.C. Therefore, USDA is not reporting recordkeeping or estimated paperwork burden associated with this amendment.

Government Paperwork Elimination Act

USDA is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require government agencies in general, and CCC in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Executive Order 12988

This amendment to the January 21, 2009, interim final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this amendment are not retroactive and preempt State and local laws to the extent that such laws are inconsistent with this interim final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 11, 614, and 780 must be exhausted.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Federal Crop Insurance Reform Act of 1994 (Pub. L. 103–354), USDA classified this rule as non-major. Therefore, a risk analysis was not conducted.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), USDA assessed the effects of this amendment to the January 21, 2009, interim final rule on State, local, and Tribal Governments and the public. This rule does not compel the expenditure of $100 million or more by any State, local, or Tribal Governments or anyone in the private sector; therefore, a statement under Section 202 of the Unfunded Mandates Reform Act is not required.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The January 21, 2009, interim final rule was not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This amendment to the January 21, 2009, interim final rule will not result in an annual effect on the

economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete in domestic and export markets. The provisions of this amendment to the January 21, 2009, interim final rule do not alter the original determination under SBREFA. However, Section 2904(c) of the 2008 Act requires that the Secretary use the authority in section 808(2) of Title 5, U.S.C., which allows an agency to forego SBREFA's usual Congressional review delay of the effective date of a regulation if the agency finds that there is a good cause to do so. USDA hereby determines that it has good cause to do so to meet the Congressional intent to have the conservation programs authorized or amended by Title II of the 2008 Act in effect as soon as possible. Accordingly, this rule is effective upon filing for public inspection by the Office of the Federal Register.

Executive Order 13132

E.O. 13132 requires USDA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' E.O. 13132 defines the term ''policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under E.O. 13132, USDA may not issue a regulation that has federalism implication, that imposes substantial direct compliance costs, and that is not required by statute unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or USDA consults with State and local officials early in the process of developing the proposed regulation. USDA shows sensitivity to federalism concerns by requiring the State Conservationists to meet with, and provide opportunities for involvement of State and local governments through the State Technical Committee. The interim final rule published on January 21, 2009, will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. The provisions of this amendment do not alter this determination. Thus, the Executive Order does not apply to this rule.

Executive Order 13175

This amendment to the interim final rule of January 21, 2009, has been reviewed in accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. USDA has assessed the impact of this interim final rule on Indian Tribal Governments and has concluded that this rule will not negatively affect communities of Indian Tribal Governments. The rule will neither impose substantial direct compliance costs on Indian Tribal Governments, nor preempt tribal law.

Discussion of Program

Background

This amendment is effective on the date published in the **Federal Register**. The GRP is a voluntary program to help farmers and ranchers protect grazing uses and related conservation values on their lands. GRP offers enrollment through conservation easements and through rental contracts.

The 2008 Act made several program changes to GRP. Among the changes, the 2008 Act added the ability of USDA to enter into a cooperative agreement with an eligible entity to own, write, and enforce easements. Thus, under a cooperative agreement, USDA provides matching funds to other entities to purchase conservation easements, rather than purchase such easements directly. The 2008 Act also requires USDA to ''ensure that the terms of an easement include a contingent right of enforcement for the Department'' where title to the conservation easement is either held by an entity other than the Federal Government or title is transferred from the Federal Government to a non-Federal entity.

The January 21, 2009, GRP interim final rule incorporated the changes to the program made by the 2008 Act. Additionally, USDA identified the contingent right of enforcement a Federal acquisition of a real property right. This identification as a Federal acquisition requires USDA to follow Federal land acquisition procedures for all easements acquired under GRP.

In the preamble of the January 21, 2009, interim final rule, USDA explained that it had consulted with the Office of the General Counsel and had determined that because the contingent right of enforcement appears within the terms of a conservation easement deed, it constituted an acquisition of a Federal real property right. Despite the sound reasoning provided in the preamble, USDA believes that it should reconsider its original interpretation. The conclusion that the inclusion of the term in a conservation easement deed constitutes as a Federal acquisition of real property is not consistent with Congressional intent gleaned from the legislative history of how such term is used in other parts of the 2008 Act, specifically the Farm and Ranch Lands Protection Program (FRPP), and how it is incorporated into GRP implementation. Therefore, USDA has examined whether an alternative understanding of the nature of the contingent right of enforcement can be ascertained. A similar revision is being made to the FRPP interim final regulation.

Under GRP, USDA may enroll easements through three methods of enrollment. In particular, USDA has authority to: (1) Purchase conservation easements directly; (2) transfer title to those federally-acquired easements to a third party; or (3) enter into cooperative agreements with eligible entities for those entities to purchase, own, enforce, and monitor easements ''in lieu of the Secretary.'' Under the first two methods of enrollment, the conservation easement is purchased directly by the United States, and original title to the conservation easement is held by the United States. Therefore, these GRP easements are Federal acquisitions of real property rights.

In contrast, under the third method of enrollment where an eligible entity purchases a conservation easement with Federal financial assistance, the United States Government is not expending funds to acquire title to the conservation easement, but instead receives a right of enforcement as a condition of assistance.

For the third method of enrollment, the GRP statute prescribes the use of a cooperative agreement to provide a mechanism for GRP funds to assist eligible partners in the purchase of easements. Significantly, the GRP statute specifies that the ownership of the easement is in lieu of ownership by the Secretary. More particularly, Section 1238Q of the GRP statute provides that: ''(e) Protection of Federal Investment—When delegating a duty under this section, the Secretary shall ensure that the terms of an easement include a contingent right of enforcement for the Department.'' This text requires the Secretary to ensure that the easement ''includes'' a contingent right of enforcement, rather than requiring the Secretary to ''acquire'' such right. When viewed in the context of the overall framework of the program to provide alternative ownership arrangements of

GRP easements, USDA interprets that the contingent right of enforcement in an easement purchased, owned, and written by a non-Federal entity is not a Federal acquisition of a real property right triggering Federal procedures such as 40 U.S.C. 3111 and the implementing Department of Justice Title standards. Rather, the incorporation of the contingent right of enforcement in the terms of the deed is a condition of Federal financial assistance.

This revised interpretation of the contingent right of enforcement is more consistent with the revised structure of the GRP easement, which now provides for the third party acquisition option using Federal financial assistance. At the same time, this interpretation still meets the GRP statutory requirement that the NRCS Chief, on behalf of the United States, has the ability to protect the Federal investment for the duration of the GRP funded easement by interpreting the right of enforcement as a real property right which runs with the land. This right is obtained as a condition placed upon another entity to obtain funding under GRP for its acquisition of a conservation easement. Therefore, the inclusion of the right of enforcement in the deed is not an acquisition, and the Federal real property acquisition requirements do not apply.

Wind and Solar Power Generation Facilities

In the January 21, 2009, interim final rule, a new paragraph (h)(5) was added to § 1415.4 to allow for the inclusion of wind power facilities for on-farm use as a potential permitted use for the GRP participant's farming or ranching operation pursuant to the Secretary's discretionary authority established in the 2008 Act. In particular, Section 2403 of the 2008 Act removed the prohibition against soil disturbing activities.

Although USDA expressed support for wind power generation for on-farm use on GRP lands, USDA explained that the opportunity to place generating stations on easement or contract acres is not a guaranteed right. Authorization may only be provided after USDA conducts a site-specific evaluation to determine that there are no negative impacts on threatened, endangered or at-risk species, migratory wildlife, or related natural resources, cultural resources, or the human environment.

While the January 21, 2009, interim final rule continued the prohibition against wind power facilities for off-farm power generation on GRP enrolled lands, the interim final rule did not address directly other types of renewable power generation facilities, such as solar panel arrays. USDA treated facilities differently depending on the intended use of the power generated from the wind power facilities, i.e. on-farm use versus off-farm use. USDA recognizes that even facilities authorized solely for on-farm use may generate some excess electricity that is utilized off-farm.

USDA believes that off-farm wind power generation should not be identified specifically as prohibited on lands enrolled in GRP. The statute only identifies crop production (other than hay) as specifically prohibited to occur on enrolled lands. All other activities are evaluated by whether it is ''inconsistent with maintaining grazing uses and related conservation values protected under an easement or rental contract.'' Therefore, USDA is amending the January 21, 2009, GRP interim final rule to remove the blanket prohibition upon wind power facilities for off-farm power generation.

USDA is not replacing the blanket prohibition with a blanket authorization of wind power facilities. The scale and scope of wind power generation facilities vary greatly. The installation of large-scale wind power generation facilities constitutes a conversion activity to non-grazing uses, inconsistent with program purposes. However, a small-scale, appropriately sited facility may provide both the electricity needed to power electric livestock fencing on the easement while providing local off-farm electricity to a neighbor's fencing as well. This variance of scope and scale requires site-specific evaluation for whether a particular activity will be authorized.

USDA intended the original restriction to ''on-farm'' use to provide an inherent limitation upon the scale of facilities being considered for authorization. However, this limitation had the unintended consequence of requiring USDA to monitor electric usage of a landowner, rather than focus upon whether the landowner's activities are consistent with the grazing and conservation purposes of the enrolled acreage. USDA believes the focus of an activity should remain upon its impacts to the grazing and conservation values of the enrollment.

USDA will not authorize any wind power generating facilities (on-farm or off-farm) on GRP lands unless USDA determines, based on a site-specific National Environmental Policy Act environmental analysis (EA or EIS), that there will be no adverse effect on threatened, endangered or other at-risk species, migratory wildlife, or related natural resources, cultural resources, or the human environment or when the impacts of such facilities can be mitigated to a level of non-significance. Furthermore, USDA will only authorize power generation facilities after evaluating whether a reasonable alternative exists, whether there is a compelling public need, whether the purposes for which the easement was acquired can be maintained, and the degree to which the footprint of the facility and related infrastructure impacts the nature of the grazing lands and other conservation values obtained through the contract or easement. USDA will not authorize the installation of wind power generation facilities in situations where reasonable alternatives exist.

USDA will follow the guidelines being developed by the United States Fish and Wildlife Service (FWS) on avoiding and minimizing wildlife impacts from wind turbines. Until the guidelines are published, USDA will assess potential wildlife impacts in coordination with the FWS and the appropriate State fish and wildlife agency before authorizing any wind power generation facilities (on-farm or off-farm) on GRP lands.

USDA also revises paragraph (h)(5) to authorize the installation of other types of renewable energy sources for power generation, provided they are consistent with the grazing uses and other conservation values of the program as determined by USDA on a site-specific basis. Just as for wind power generation facilities, USDA will not authorize the installation of renewable energy power generation facilities, such as solar power panel arrays, unless USDA determines through a site-specific EA or EIS there will be no adverse effect on threatened, endangered or other at-risk species, migratory wildlife, or related natural resources, cultural resources, or the human environment or when the impacts of such activities can be mitigated to a level of non-significance. USDA will authorize power generation facilities only when the footprint of the facility and related infrastructure would have a minimal impact on the nature of the grazing lands and other conservation values obtained through the contract or easement.

Again, the opportunity to place any power-generating facilities and related infrastructure on easement or contract acres is not a guaranteed right. NRCS continues to seek public comment on how it should handle requests for renewable power generation facilities on GRP lands.

Request for Public Input

USDA supports the Nation's ability to increase renewable energy production,

conserve energy, mitigate the effects and adapt to climate change, and reduce carbon and greenhouse gas emissions through various assistance programs. USDA is using this rulemaking opportunity to obtain input from the public on how GRP can achieve its program purposes and contribute to the Nation's efforts with renewable energy production, energy conservation, mitigating the effects of climate change, facilitating climate change adaptation, or reducing carbon emissions.

List of Subjects in 7 CFR Part 1415

Administrative practice and procedure, Agriculture, Soil conservation, Grasslands, Grassland protection, Grazing land protection.

■ For the reasons stated in the preamble, the CCC amends part 1415 of Title 7 of the CFR as set forth below:

PART 1415—GRASSLANDS RESERVE PROGRAM

■ 1. The authority citation for part 1415 continues to read as follows:

Authority: 16 U.S.C. 3838n–3838q.

■ 2. Section 1415.3 is amended by revising the definition for the term ''Right of enforcement'' to read as follows:

§ 1415.3 Definitions.

* * * * *

''Right of enforcement'' means a property interest in the easement the Chief may exercise on behalf of the United States under specific circumstances in order to enforce the terms of the conservation easement. The right of enforcement provides that the Chief has the right to inspect and enforce the easement if the eligible entity fails to uphold the easement or attempts to transfer the easement without first securing the consent of the Secretary.

* * * * *

■ 3. Section 1415.4 is amended by revising paragraph (h)(5) and removing paragraph (i)(3) to read as follows:

§ 1415.4 Program requirements.

* * * * *

(h) * * *

(5) Facilities for power generation through renewable sources of energy production provided the scope and scale of the footprint of the facility and associated infrastructure is consistent with program purposes as determined by USDA through analysis of the potential site-specific environmental effects; and

* * * * *

■ 4. Section 1415.17 is amended by revising paragraph (e)(1) to read as follows:

§ 1415.17 Cooperative agreements.

* * * * *

(e) * * *

(1) In order to protect the public investment, the conveyance document must contain a ''right of enforcement.'' NRCS shall specify the terms for the ''right of enforcement'' clause to read as set forth in the GRP cooperative agreement. This right is a vested property right and cannot be condemned or terminated by State or local government.

* * * * *

Signed this 14th day of August, 2009, in Washington, DC.

Dave White,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

Signed this 13th day of August, 2009, in Washington, DC.

Carolyn B. Cooksie,

Acting Administrator, Farm Service Agency.

[FR Doc. E9–20074 Filed 8–20–09; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, and 125

[Docket No.: FAA–1999–6482; Amendment No. 91–304A, 121–342A and 125–56A]

RIN 2120AG87

Revisions to Digital Flight Data Recorder Regulations for Boeing 737 Airplanes and for All Part 125 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; Notice of Office of Management and Budget approval for information collection.

SUMMARY: This notice announces the Office of Management and Budget's (OMB's) approval of the information collection requirement contained in the FAA's final rule, ''Revisions to Digital Flight Data Recorder Regulations for Boeing 737 Airplanes and for All Part 125 Airplanes.'' That final rule was published on December 2, 2008.

DATES: The FAA received OMB approval for the information collection requirements in the final rule published December 2, 2008, 73 FR 73171, on April 3, 2009. The final rule became effective on February 9, 2009.

FOR FURTHER INFORMATION CONTACT: For technical issues: Brian A. Verna, Avionics Systems Branch, Aircraft Certification Service, AIR–130, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 385–4643; facsimile (202) 385–4651; e-mail *brian.verna@faa.gov.* For legal issues: Karen L. Petronis, Senior Attorney, Regulations Division, AGC–200, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3073; facsimile (202) 267–7971; *e-mail: karen.petronis@faa.gov.*

SUPPLEMENTARY INFORMATION:

On December 2, 2008, the FAA published the final rule entitled ''Revisions to Digital Flight Data Recorder Regulations for Boeing 737 Airplanes and for All Part 125 Airplanes'' (73 FR 73171). This rule amended the regulations governing flight data recorders to increase the number of digital flight data recorder parameters for all Boeing 737 series airplanes manufactured after August 18, 2000. This change was based on safety recommendations from the National Transportation Safety Board following its investigations of two accidents and several incidents involving 737s. The final rule also adopted a prohibition on deviations from flight recorder requirements for all airplanes operated under part 125.

The final rule contained information collection requirements that the Office of Management and Budget (OMB) had not yet approved as of the date of publication. In the ''Paperwork Reduction Act'' section of the final rule, the FAA noted that the agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement, unless it displays a currently valid OMB control number.

In accordance with the Paperwork Reduction Act, OMB approved that request on April 3, 2009, and assigned the information collection OMB Control Number 2120–0616. The FAA request was approved by OMB without change and expires on April 30, 2012. This notice is being published to inform affected parties of the approval and to announce that the information collection requirements in the final rule entitled ''Revisions to Digital Flight Data Recorder Regulations for Boeing 737 Airplanes and for All Part 125 Airplanes'' will become effective when this notice is published in the **Federal Register**.

Issued in Washington, DC, on August 17, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E9–20059 Filed 8–20–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 601

[Docket No. FDA–2009–N–0100]

Revision of the Requirements for Publication of License Revocation; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of September 17, 2009, for the direct final rule that appeared in the **Federal Register** of May 5, 2009 (74 FR 20583). The direct final rule amends the biologics regulations to clarify the regulatory procedures for notifying the public about the revocation of a biologics license. The rule provides that FDA will publish a notice in the **Federal Register** following revocation of a biologics license under FDA regulations and will include a statement of the specific grounds for the revocation. This document confirms the effective date of the direct final rule.

DATES: *Effective date confirmed:* September 17, 2009.

FOR FURTHER INFORMATION CONTACT: Paul E. Levine, Jr., Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 5, 2009 (74 FR 20583), FDA issued a direct final rule amending the biologics regulations for notifying the public about the revocation of a biologics license by clarifying that FDA will publish a notice of license revocation in cases where the Commissioner has made a finding that reasonable grounds for revocation exist under 21 CFR 601.5(b). The rule, as amended, does not affect other regulations or procedures for notification of license revocation. The rule, as amended, also does not affect existing FDA practices for publishing notices of voluntary withdrawal, including notices of voluntary withdrawal of new drug applications.

FDA solicited comments concerning the direct final rule for a 75-day period ending July 20, 2009. FDA stated that the effective date of the direct final rule would be on September 17, 2009, 60 days after the end of the comment period, unless any significant adverse comment was submitted to FDA during the comment period. FDA did not receive any significant adverse comments.

Authority: Therefore, under the biological products provisions under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 601 is amended. Accordingly, the amendments issued thereby are effective.

Dated: August 14, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20119 Filed 8–20–09; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[OAR–2004–0091; FRL–8941–3]

Outer Continental Shelf Air Regulations; Consistency Update for California

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Final rule.

SUMMARY: EPA is finalizing the update of the Outer Continental Shelf (''OCS'') Air Regulations proposed in the **Federal Register** on April 20, 2009. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act Amendments of 1990 (''the Act''). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (Santa Barbara County APCD) is the designated COA. The intended effect of approving the requirements contained in the ''Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources'' (June 2009) is to regulate emissions from OCS sources in accordance with the requirements onshore.

DATES: *Effective Date:* This rule is effective on September 21, 2009.

The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of September 21, 2009.

ADDRESSES: EPA has established docket number OAR–2004–0091 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Air Division, U.S. EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document, the terms ''we,'' ''us,'' or ''our'' refer to U.S. EPA.

Organization of this document: The following outline is provided to aid in locating information in this preamble.

Table of Contents

I. Background

On April 20, 2009 (74 FR 17934), EPA proposed to approve requirements into the OCS Air Regulations pertaining to Santa Barbara County APCD. These requirements are being promulgated in response to the submittal of rules from this California air pollution control agency. EPA has evaluated the proposed requirements to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this

statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of State or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. Public Comment

EPA's proposed actions provided a 30-day public comment period. During this period, we received no comments on the proposed action.

III. EPA Action

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. No changes were made to the proposed action. EPA is approving the proposed action under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into Part 55 as they exist onshore.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore air control requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the Clean Air Act. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy discretion by EPA. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, nor does it impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

Under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* OMB has approved the information collection requirements contained in 40 CFR part 55 and, by extension, this update to the rules, and has assigned OMB control number 2060–0249. Notice of OMB's approval of EPA Information Collection Request (''ICR'') No. 1601.06 was published in the Federal Register on March 1, 2006 (71 FR 10499–10500). The approval expires January 31, 2009. As EPA previously indicated (70 FR 65897–65898 (November 1, 2005)), the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 549 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable. In addition, the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations lists the regulatory citations for the information requirements contained in 40 CFR part 55.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 21, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial

review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 24, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

■ Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 55—[AMENDED]

■ 1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising paragraph (e)(3)(ii)(F) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources,* June, 2009.

* * * * *

■ 3. Appendix A to CFR Part 55 is amended by revising paragraph (b)(6) under the heading ''California'' to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

(b) * * *

* * * * *

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 102 Definitions (Adopted 01/15/09)
Rule 103 Severability (Adopted 10/23/78)
Rule 106 Notice to Comply for Minor Violations (Repealed 01/01/2001)
Rule 107 Emergencies (Adopted 04/19/01)
Rule 201 Permits Required (Adopted 06/19/08)
Rule 202 Exemptions to Rule 201 (Adopted 06/19/08)
Rule 203 Transfer (Adopted 04/17/97)
Rule 204 Applications (Adopted 04/17/97)
Rule 205 Standards for Granting Permits (Adopted 04/17/97)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 03/17/05)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter—Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration—Southern Zone (Adopted 10/23/78)
Rule 306 Dust and Fumes—Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate—Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/02/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 01/15/09)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems—Southern Zone (Adopted 10/23/78)
Rule 321 Solvent Cleaning Operations (Adopted 09/18/97)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 11/15/01)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 07/19/01)
Rule 326 Storage of Reactive Organic Compound Liquids (Adopted 01/18/01)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Metal Parts and Products (Adopted 01/20/00)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 06/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 06/19/08)
Rule 342 Control of Oxides of Nitrogen (NOx) from Boilers, Steam Generators and Process Heaters) (Adopted 04/17/97)
Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 344 Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)
Rule 346 Loading of Organic Liquid Cargo Vessels (Adopted 01/18/01)
Rule 352 Natural Gas-Fired Fan-Type Central Furnaces and Residential Water Heaters (Adopted 09/16/99)
Rule 353 Adhesives and Sealants (Adopted 08/19/99)
Rule 359 Flares and Thermal Oxidizers (Adopted 06/28/94)
Rule 360 Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 10/17/02)
Rule 361 Small Boilers, Steam Generators, and Process Heaters (Adopted 01/17/08)
Rule 370 Potential to Emit—Limitations for Part 70 Sources (Adopted 06/15/95)
Rule 505 Breakdown Conditions Sections A., B.1., and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 06/15/81)
Rule 702 General Conformity (Adopted 10/20/94)
Rule 801 New Source Review (Adopted 04/17/97)
Rule 802 Nonattainment Review (Adopted 04/17/97)
Rule 803 Prevention of Significant Deterioration (Adopted 04/17/97)
Rule 804 Emission Offsets (Adopted 04/17/97)
Rule 805 Air Quality Impact Analysis and Modeling (Adopted 04/17/97)
Rule 808 New Source Review for Major Sources of Hazardous Air Pollutants (Adopted 05/20/99)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 06/19/03)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

* * * * *

[FR Doc. E9–20048 Filed 8–20–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2008–0252; FRL–8433–9]

RIN 2070–AB27

Certain Chemical Substances; Withdrawal of Significant New Use Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rules.

SUMMARY: EPA is withdrawing two significant new use rules (SNURs) promulgated under section 5(a)(2) of the

Toxic Substances Control Act (TSCA) for chemical substances which were the subject of premanufacture notices (PMNs), i.e., multi-walled carbon nanotubes (PMN P–08–177) and single-walled carbon nanotubes (PMN P–08–328). These chemical substances are subject to TSCA section 5(e) consent orders issued by EPA. EPA published the SNURs using direct final rulemaking procedures. EPA received a notice of intent to submit adverse comments on these rules. Therefore, the Agency is withdrawing these SNURs, as required under the expedited SNUR rulemaking process. EPA also intends to publish in the **Federal Register**, under separate notice and comment rulemaking procedures, proposed SNURS for these two chemical substances.

DATES: This final rule is effective August 21, 2009.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Karen Chu, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8773; e-mail address: *chu.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

A list of potentially affected entities is provided in the **Federal Register** of June 24, 2009 (74 FR 29982) (FRL–8417–6). If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Rules are Being Withdrawn?

In the **Federal Register** of June 24, 2009 (74 FR 29982), EPA issued several direct final SNURs, including SNURs for the two chemical substances that are the subject of this withdrawal. These direct final rules were issued pursuant to the procedures in 40 CFR part 721, subpart D. In accordance with 40 CFR 721.160(c)(3)(ii), EPA is withdrawing the rules issued for multi-walled carbon nanotubes (PMN P–08–177) and single-walled carbon nanotubes (PMN P–08–328) because the Agency received a notice of intent to submit adverse comments. EPA intends to propose SNURs for these two chemical substances via notice and comment rulemaking in a future **Federal Register** document.

For further information regarding EPA's expedited process for issuing SNURs, interested parties are directed to 40 CFR part 721, subpart D, and the **Federal Register** of July 27, 1989 (54 FR 31314). The record for the direct final SNURs for these chemical substances which are being withdrawn was established at EPA–HQ–OPPT–2008–0252. That record includes information considered by the Agency in developing these rules and the notice of intent to submit adverse comments.

III. How Do I Access the Docket?

To access the electronic docket, please go to *http://www.regulations.gov* and follow the online instructions to access docket ID no. EPA–HQ–OPPT–2008–0252. Additional information about the Docket Facility is provided under **ADDRESSES** in the **Federal Register** document of June 4, 2009 (74 FR 29982). If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

IV. What Statutory and Executive Order Reviews Apply to this Action?

This final rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Agency has determined that this withdrawal will not have any adverse impacts, economic or otherwise. The statutory and executive order review requirements applicable to the direct final rule were discussed in the **Federal Register** document of June 24, 2009 (74 FR 29982). Those review requirements do not apply to this action because it is a withdrawal and does not contain any new or amended requirements.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 17, 2009.

Wendy C. Hamnett,

Acting Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.10155 [Removed]

■ 2. By removing § 721.10155.

§ 721.10156 [Removed]

■ 3. By removing § 721.10156.

[FR Doc. E9–20150 Filed 8–20–09; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0809031176–91213–03]

RIN 0648–AX25

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands (Amendment 90) and Gulf of Alaska Groundfish (Amendment 78); Limited Access Privilege Programs

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations implementing Amendment 90 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 78 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. This regulation amends the Bering Sea and Aleutian Islands Amendment 80 Program and the Central Gulf of Alaska Rockfish Program to allow post-delivery transfers of cooperative quota to cover overages. This action is necessary to mitigate potential overages, reduce enforcement costs, and provide for more precise total allowable catch management. This action is intended to promote the goals

and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plans, and other applicable law.

DATES: Effective September 21, 2009.

ADDRESSES: Amendment 90 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 78 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, the categorical exclusion memoranda, and the Regulatory Impact Review/Final Regulatory Flexibility Analyses (RIR/FRFA) prepared for this action as well as the Programmatic Supplemental Environmental Impact Statement prepared for Alaska groundfish fisheries may be obtained from the NMFS Alaska Region website at: *http://alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill or Rachel Baker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone off Alaska are managed under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendment 80 to the BSAI FMP implemented the Amendment 80 Program. Amendment 68 to the GOA FMP implemented the Central GOA Rockfish Program (Rockfish Program). Regulations implementing Amendment 80 were published on September 14, 2007 (72 FR 52668), and regulations implementing Amendment 68 were published on November 20, 2006 (71 FR 67210). These regulations are located at 50 CFR part 679.

Background

NMFS issued quota share (QS) under the Amendment 80 Program and the Rockfish Program. Under the Amendment 80 Program, NMFS issued QS to persons based on their qualifying harvest histories using specific trawl catcher/processor vessels in six BSAI non-pollock groundfish fisheries during 1998 through 2004. Under the Rockfish Program, NMFS issued QS to persons based on their qualifying harvest histories using trawl catcher vessels and trawl catcher/processors of rockfish species and species harvested incidentally in Central Gulf of Alaska rockfish fisheries during 1996 through 2002. These two programs are commonly known as limited access privilege programs (LAPPs) because the participants may receive exclusive access to fishery resources if specific conditions are met. Each year, the person issued QS may participate in either a fishery cooperative with other QS holders or in a limited access fishery with other non-cooperative participants who hold QS. The total amount of QS assigned to all members of a cooperative yields an amount of cooperative quota (CQ), which is a permit that provides an exclusive harvesting privilege for a specific amount of groundfish, in specific fisheries, in a given year. Additionally, a cooperative also receives a specific amount of CQ that may be used for the incidental catch of a specific amount of crab or halibut. Incidentally caught crab or halibut, commonly called prohibited species catch (PSC), cannot be retained, processed, or sold. QS holders participating in the limited access fishery are not assigned an exclusive harvest or PSC use privilege, but may compete for the allocation of groundfish and PSC remaining after CQ has been assigned to all cooperatives.

After joining a cooperative or the limited access fishery, a person may participate in only that cooperative or the limited access fishery for that calendar year. A person who joins a cooperative must assign the individual fishing quota derived from his or her QS (prior to the start of the fishing season for that LAPP) to the cooperative and the specific vessels that will be fishing for that cooperative. For example, persons wishing to participate in an Amendment 80 cooperative must assign their QS and vessels to an Amendment 80 cooperative by November 1 of each year to be eligible to fish in a cooperative for the following calendar year. Once a person assigns his QS or vessel to a cooperative, he may not reassign his QS or vessel to another cooperative or the limited access fishery during the calendar year for which that QS or vessel is assigned.

Table 1 shows the specific groundfish species for which NMFS issues QS and the PSC species for which CQ may be issued if a person joins a cooperative under the Amendment 80 Program and Rockfish Program.

Table 1. Groundfish and PSC Species that may Yield CQ in the Amendment 80 Program and Rockfish Program

Groundfish species for which QS is issued and that can yield CQ	PSC species for which CQ can be issued
BSAI Amendment 80 Program	
Aleutian Islands Pacific ocean perch	Pacific halibut Zone 1 - Bristol Bay red king crab, Chionoecetes opilio crab, and C. bairdi crab Zone 2 - C. opilio crab and C. bairdi crab
Atka mackerel	
Flathead sole	
Pacific cod	
Rock sole	
Yellowfin sole	
Central GOA Rockfish Program	
Northern rockfish (catcher vessels & catcher/processors)	Pacific halibut
Pacific ocean perch (catcher vessels & catcher/processors)	
Pelagic shelf rockfish (catcher vessels & catcher/processors)	
Thornyhead rockfish (catcher vessels & catcher/processors)	
Trawl sablefish (catcher vessels & catcher/processors)	
Rougheye rockfish (catcher/processors only)	
Shortraker rockfish (catcher/processors only)	
Pacific cod (catcher vessels only)	

The mechanisms for joining a cooperative, the process for issuing CQ for groundfish or PSC species, and the monitoring and enforcement provisions necessary to ensure proper accounting of catch under the Amendment 80 and Rockfish Programs are described in detail in the final rules implementing those LAPPs and are not repeated here (for the Amendment 80 Program see 72 FR 52668, September 14, 2007; for the Rockfish Program see 71 FR 67210, November 20, 2006).

The size of each cooperative's annual CQ allocation is based on the amount of QS held by the members relative to the total QS pool for a given groundfish fishery. For example, a cooperative in the Amendment 80 Program composed of members holding QS equaling 40 percent of the QS pool in the yellowfin sole fishery would receive CQ to harvest 40 percent of the annual total allowable catch (TAC) of yellowfin sole that is assigned to the Amendment 80 Program. Any catch of groundfish or PSC species for which CQ is issued under the specific LAPP (i.e., either the Amendment 80 or Rockfish Program) is debited from a cooperative's CQ account.

The Amendment 80 Program and the Rockfish Program allow cooperatives to transfer their unused CQ between cooperatives. Transfers allow cooperatives to tailor their operations to specific harvesting conditions. All transfers must be approved by NMFS before they become effective. Once a CQ transfer has been approved by NMFS, the CQ account of the transferring cooperative is debited, and the CQ account of the receiving cooperative is credited.

CQ Overages Under Current System

Under existing regulations, a cooperative in either the Amendment 80 Program or the Rockfish Program is prohibited from catching groundfish or PSC on an annual basis that exceeds the amount of CQ that is issued to that cooperative (see § 679.7(n)(7)(i) for the Rockfish Program and § 679.7(o)(4)(v) for the Amendment 80 Program). This prohibits a cooperative from having a negative CQ balance for a given species and subsequently receiving transferred CQ after the landing to rectify the negative CQ balance.

CQ overages by cooperatives in the Rockfish Program and Amendment 80 Program are likely to be uncommon. In 2007, the first year under the Rockfish Program, no overages of CQ occurred. Results from 2008, the second year of the Rockfish Program, and the first year of the Amendment 80 Program, are pending.

The Council recommended Amendments 90 and 78 to the FMPs to improve the fleet's flexibility, reduce the potential number of violations for overages, reduce enforcement costs, and allow more complete harvest of allocations. NMFS published a notice of availability for Amendments 90 and 78 on December 17, 2008 (73 FR 76605), and a proposed rule on January 5, 2009 (74 FR 254). More information on how overages can occur and an overview of the catch and accounting system used by NMFS and the NOAA Office for Law Enforcement to monitor CQ is described in the preamble to the proposed rule.

The comment period on the proposed rule and the notice of availability ended on February 17, 2009. Six comments were received from three individuals regarding the proposed rule and FMP amendment. Two comments supported the proposed rule, and three comments questioned specific technical aspects of the regulation. These comments did not raise new issues or concerns that have not been addressed in the RIR/FRFA prepared to support this action or the preamble to the proposed rule. The remaining comment was not directly related to the action and did not raise new issues or concerns that have not already been addressed in the analysis prepared to support this action or the preamble to the proposed rule. After

consideration of these comments, NMFS approved Amendments 90 and 78 on March 16, 2009.

Effects of the Action

A transfer of CQ after fish have been landed to rectify a negative CQ balance is commonly known as a post-delivery transfer. The following sections briefly describe the effects of allowing post-delivery transfers to cover CQ overages. Additional discussion of the rationale and effects of this action is provided in the preamble to the proposed rule published on January 5, 2009 (74 FR 254), and is not repeated here.

Allowing post-delivery transfers in the Amendment 80 Program and Rockfish Program can mitigate potential overages, reduce enforcement costs, and provide for more precise TAC management and more value from the harvests for participants. Post-delivery transfers also increase fleet flexibility and allow more efficient use of resources. The flexibility to complete transfers after delivery reduces the potential that some CQ will remain unharvested if a cooperative is not able to harvest its CQ allocation without the risk of an overage, and minimizes the potential for CQ overages because a CQ account can be balanced after delivery through a post-delivery transfer.

This action allows post-delivery transfers to cover CQ overages. There is no limit on the size of a post-delivery transfer or on the number of post-delivery transfers a cooperative could undertake, but a vessel that is assigned to that cooperative may not begin a new fishing trip for that cooperative if the CQ account balance is zero or negative for any of the groundfish or PSC species CQ assigned to the cooperative. This action prohibits a person from having a negative balance in a CQ account for any species after the end of the calendar year for which that CQ permit was issued.

This rule does not modify existing regulations that require that CQ issued to a cooperative can be transferred only among other cooperatives, and that participants in a limited access fishery in either of these two LAPPs may not transfer any unused TAC to cooperatives as CQ.

Under the final rule, no member of a cooperative may use any vessel assigned to that cooperative to begin a new fishing trip for any groundfish CQ species unless the CQ balance of the cooperative for all groundfish or PSC species for which CQ is assigned is positive. The final rule defines the term ''fishing trip'' for purposes of this requirement to provide a clear standard for fishery participants. A fishing trip is defined as the period beginning when a vessel operator commences harvesting any groundfish species that is assigned CQ under the relevant LAPP and ending when the vessel operator removes any processed or unprocessed groundfish CQ species from that vessel. The specific groundfish and PSC species for both LAPPs are listed above in Table 1. The definition of a fishing trip effectively extends from the first harvest of a groundfish species that is issued CQ in the applicable LAPP until the beginning of a delivery of groundfish from a catcher vessel, or the beginning of offloading processed groundfish from a catcher/processor. This definition ensures that no member of a cooperative could commence fishing for any groundfish species on the cooperative's CQ permit on any vessel until the CQ accounts of all groundfish and PSC species assigned to that cooperative are positive. This provision is intended to discourage harvesters from continuing to debit groundfish or PSC against their cooperative's CQ account for numerous fishing trips and run a negative CQ balance without ensuring that adequate unused CQ exists that can be transferred from another cooperative to cover that negative balance.

This rule prohibits a cooperative from maintaining a negative balance in its CQ accounts for any groundfish or PSC species after the end of the calendar year for which that CQ was issued. This prohibition effectively requires that all post-delivery CQ transfers must be completed by December 31 of each year. Overages that are not covered by December 31 of each year are subject to a penalty or other enforcement action. This action is expected to reduce the risk of potential overages because cooperatives would have time to balance their CQ accounts by the end of the calendar year.

Summary of Regulatory Changes

This action makes the following changes to the existing regulatory text at 50 CFR part 679:

- Add two new paragraphs to define the term ''fishing trip'' at § 679.2;
- Modify the existing prohibitions at § 679.7(n)(7)(i) for the Rockfish Program and § 679.7(o)(4)(v) for the Amendment 80 Program to clarify that a person may not begin a fishing trip with a vessel assigned to a Rockfish Program cooperative or Amendment 80 Program cooperative, if that Amendment 80 or Rockfish cooperative does not hold unused CQ for all species for which CQ is assigned; and
- Add prohibitions at § 679.7(n)(7)(vi) for the Rockfish Program and § 679.7(o)(4)(vi) for the Amendment 80 Program to prohibit a person from having a negative balance in a CQ account for any species after the end of the calendar year for which that CQ permit was issued.

Response to Comments

NMFS received six comments from three individuals regarding Amendments 90 and 78 and the proposed rule. Two commenters represent organizations of Rockfish Program and Amendment 80 Program participants that will be affected by this action. The third commenter did not indicate an affiliation.

Comment 1: The commenter raises general concerns about fisheries management asserting that fishery policies have been overly liberal and have not been to the benefit of American citizens. The commenter asserts that NMFS is biased and should not be allowed to manage fisheries.

Response: The comments are not specifically related to the proposed rule and recommend broad changes to fisheries management that are outside the scope of this action.

Comment 2: The commenter represents Rockfish Program participants who support this action and believe it will facilitate catch accounting in the Rockfish Program to accommodate overages. Given the careful oversight of cooperative managers, post-delivery transfers are likely to be infrequent and will address minor overages.

Response: NMFS notes the support for this action.

Comment 3: The Rockfish Program is a multi-species trawl LAPP. Trawl fisheries may catch species other than those intended, which can make it more difficult to maximize a cooperative's CQ allocation without exceeding that amount. These factors should be cited as additional rationale for this action.

Response: The Council addressed the factors cited by the commenter during the development of Amendments 90 and 78. Section 2.3.1 of the analysis prepared for Amendment 78 provides a detailed description of the multi-species nature of the Rockfish Program. Section 2.4 of the analysis describes the complexities harvesters face when trying to harvest a specific amount of catch in multi-species trawl fisheries and the potential effects of this action to mitigate agency and industry enforcement costs resulting from potential overages.

Comment 4: The definition of ''fishing trip'' could be subject to interpretation, and the commenter requests clarification on how this definition would apply to the Rockfish Program.

According to the proposed definition, a Rockfish Program fishing trip is defined as the period beginning when a vessel operator commences harvesting any Rockfish Program species and ending when the vessel operator offloads or transfers any Rockfish Program species, whether processed or unprocessed, from the vessel. A vessel is considered fishing for Rockfish Program species only when they are checked into the rockfish fishery via NMFS inseason management. The commenter assumes that this prohibition would not restrict a vessel from participating in another fishery where these species could be taken incidentally or as a directed target fishery but not a part of the Rockfish Program.

Response: NMFS agrees with the interpretation provided by the commenter. The regulations make it clear that the post-delivery transfer provisions apply only to the delivery of fish caught under the authority of a CQ permit. When a vessel is not fishing under a Rockfish Program fishery, fish are not harvested under a CQ permit, and the post-delivery requirement provisions do not apply.

Comment 5: It appears that a cooperative would not be in violation of the requirement that a vessel cannot begin a new fishing trip if two or more of its vessels are on the grounds simultaneously, and one vessel in the cooperative makes a delivery that causes the cooperative to exceed its CQ cap while other cooperative vessels are fishing. The regulations appear to allow vessels in a cooperative to complete their fishing trips, but would not allow them to begin a new fishing trip.

Response: NMFS agrees with the interpretation provided by the commenter. The regulations at 50 CFR 679.7(n)(7)(i) make it clear that it is prohibited to ''begin a fishing trip for any Rockfish Program species with any vessel assigned to a Rockfish cooperative if the total amount of unharvested CQ that is currently held by that Rockfish cooperative is zero or less for any species for which CQ is assigned.'' The regulations do not prohibit vessels assigned to a cooperative from completing a fishing trip if the CQ account for a cooperative has been exceeded while those vessels are fishing.

Comment 6: The commenter represents Amendment 80 Program participants who support this action and believe it will facilitate catch accounting in the Amendment 80 Program, reduce the potential for CQ overages, reduce enforcement costs, and aid the fleet in fully harvesting its CQ accounts.

Response: NMFS notes the support for this action.

Classification

Consistency With the Magnuson-Stevens Act and Other Laws

The Assistant Administrator for Fisheries, NOAA, has determined that Amendments 90 and 78 are necessary for the conservation and management of BSAI and GOA groundfish fisheries and that they are consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Final Regulatory Flexibility Analysis (FRFA)

A FRFA was prepared that describes the economic impact that this action has on small entities. The RIR/FRFA prepared for this final rule is available from NMFS (see *ADDRESSES*). The FRFA for this action describes the action, why this action is being proposed, the objectives and legal basis for the final rule, the type and number of small entities to which the final rule applies, and projected reporting, recordkeeping, and other compliance requirements of the final rule. It also identifies no overlapping, duplicative, or conflicting federal rules and describes any significant alternatives to the final rule that accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes, and that would minimize any significant adverse economic impact of the final rule on small entities. The description of the action, its purpose, and its legal basis are described in the preamble and are not repeated here.

An IRFA was prepared and summarized in the classifications section of the preamble to the proposed rule, which was published on January 5, 2009 (74 FR 254). The public comment period ended on February 17, 2009. NMFS received three public submissions containing six unique comments on Amendments 90 and 78 and the proposed rule. These comments did not address the IRFA.

For purposes of a FRFA, the Small Business Administration (SBA) has established that a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis at all its affiliated operations worldwide.

The SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, and NMFS has applied and continues to apply SBA's fish harvesting criterion for those businesses because catcher/processors are first and foremost fish harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations.

The FRFA contains a description and estimate of the number of small entities to which this final rule would apply. In the Rockfish Program, seven cooperatives formed during the first year (2007). The FRFA estimates that five of the seven cooperatives are large entities and two cooperatives are small entities. In the first year of the Amendment 80 Program (2008), participants formed one cooperative. The FRFA estimates that the Amendment 80 cooperative is a large entity.

This action directly regulates CQ holders who might use post-delivery transfers to cover overages. Estimates of the number of small entities holding CQ are based on estimates of gross revenues. Landings data from the most recent season for which data are available (2005 for Rockfish Program and 2007 for Amendment 80 Program) were used to estimate the number of small entities.

All of the directly regulated entities are expected to benefit from this action relative to the status quo alternative because the action allows greater flexibility and a period of time in which to reconcile overages. However, empirical data available to analysts on affiliations in the Rockfish Program and the Amendment 80 Program are currently incomplete, and it is not possible to certify this outcome as provided under the Regulatory Flexibility Act. Therefore, an IRFA and a FRFA were prepared as required.

Among the three alternatives the Council considered for this action, the preferred alternative as described in this rule (Alternative 2) would best minimize potential adverse economic impacts on the directly regulated entities. Under the status quo (Alternative 1), no post-delivery transfers would be allowed and small entities would continue to be penalized for overages. Alternative 3 would have

allowed post-delivery transfers, but with more limitations and restrictions than Alternative 2, the alternative that provides small entities the most flexibility to cover overages.

Recordkeeping and Reporting Requirements

This final rule does not change existing reporting, recordkeeping, or other compliance requirements. Any person wishing to cover an overage will be required to engage in a transfer of CQ. The required reporting and recordkeeping for a post-delivery transfer is the same as for any other CQ transfer. NMFS Restricted Access Management Program (RAM) will continue to oversee share accounts and share use. At the time of landing, RAM will maintain a record of any overage, but instead of reporting overages to NOAA Office of Law Enforcement immediately, RAM will defer reporting until the end of the calendar year.

Small Entity Compliance Guide

NMFS has posted a small entity compliance guide on its website at *http://alaskafisheries.noaa.gov* to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996 requirement for a plain language guide to assist small entities in complying with this rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 18, 2009.

John Oliver,

Deputy Assistant Administrator For Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq.; 1801 et seq.; 3631 et seq.; Pub. L. 108–199; Pub. L. 108–447; and Pub. L. 109–479.

■ 2. In § 679.2, paragraphs (4) and (5) are added to the term ''Fishing trip'' to read as follows:

§ 679.2 Definitions.

* * * * *

Fishing trip means:

* * * * *

(4) *For purposes of § 679.7(n)(7)*, the period beginning when a vessel operator commences harvesting any Rockfish Program species and ending when the vessel operator offloads or transfers any processed or unprocessed Rockfish Program species from that vessel.

(5) *For purposes of § 679.7(o)(4)*, the period beginning when a vessel operator commences harvesting any Amendment 80 species and ending when the vessel operator offloads or transfers any processed or unprocessed Amendment 80 species from that vessel.

* * * * *

■ 3. In § 679.7, paragraphs (n)(7)(i) and (o)(4)(v) are revised, and paragraphs (n)(7)(vi) and (o)(4)(vi) are added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(n) * * *

(7) * * *

(i) Begin a fishing trip for any Rockfish Program species with any vessel assigned to a Rockfish cooperative if the total amount of unharvested CQ that is currently held by that Rockfish cooperative is zero or less for any species for which CQ is assigned.

* * * * *

(vi) Have a negative balance in a CQ account for any species for which CQ is assigned after the end of the calendar year for which a CQ permit was issued.

* * * * *

(o) * * *

(4) * * *

(v) Begin a fishing trip for any Amendment 80 species with any vessel assigned to an Amendment 80 cooperative if the total amount of unharvested CQ that is currently held by that Amendment 80 cooperative is zero or less for any species for which CQ is assigned.

(vi) Have a negative balance in a CQ account for any species for which CQ is assigned after the end of the calendar year for which a CQ permit was issued.

* * * * *

[FR Doc. E9–20208 Filed 8–20–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 161
Friday, August 21, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 314, and 600

[Docket No. FDA–2008–N–0334]

RIN 0910–AF96

Postmarketing Safety Reports for Human Drug and Biological Products; Electronic Submission Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its postmarketing safety reporting regulations for human drug and biological products to require that persons subject to mandatory reporting requirements submit safety reports in an electronic format that FDA can process, review, and archive. FDA is taking this action to improve the agency's systems for collecting and analyzing postmarketing safety reports. The proposed change would help the agency to more rapidly review postmarketing safety reports, identify emerging safety problems, and disseminate safety information in support of FDA's public health mission. In addition, the proposed amendments would be a key element in harmonizing FDA's postmarketing safety reporting regulations with international standards for the electronic submission of safety information.

DATES: Submit written or electronic comments on the proposed rule by November 19, 2009. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by September 21, 2009, (see section ''VII. Paperwork Reduction Act of 1995'' of this document). See section III.G of this document for the proposed effective date of a final rule based on this proposed rule.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2008–N–0334 and/or RIN number 0910–AF96, by any of the following methods, except that comments on information collection issues under the Paperwork Reduction Act of 1995 must be submitted to the Office of Regulatory Affairs, Office of Management and Budget (OMB) (see the ''Paperwork Reduction Act of 1995'' section of this document).

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and Docket No. and Regulatory Information Number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

The information collection provisions of this proposed rule have been submitted to OMB for review. Interested persons are requested to fax comments regarding information collection by September 21, 2009, to the Office of Information and Regulatory Affairs, OMB. To ensure that comments on information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT:

For information concerning human drug products: Roger Goetsch, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Silver Spring, MD, 20993–0002, 301–770–9299, or

For information concerning human biological products: Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD, 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

When a drug or biological product is approved and enters the market, the product is introduced to a larger patient population in settings different from clinical trials. New information generated during the postmarketing period offers further insight into the benefits and risks of the product, and evaluation of this information is important to ensure the safe use of these products.

FDA receives information regarding postmarketing adverse drug experiences[1] from safety reports submitted to the agency. For nearly 35 years, FDA has received these postmarketing safety reports on paper. In recent years, many companies have voluntarily submitted these reports to the agency in electronic format.

Data from both electronic and paper reports are entered into FDA's Adverse Event Reporting System (AERS) database. AERS is a computerized information database designed to support FDA's postmarketing safety surveillance program for drug and biological products. The AERS database is used to store and analyze data received in postmarketing safety reports. Safety reporting data submitted on paper must first be converted into an electronic format before being entered into AERS.[2]

FDA is proposing to require use of an electronic format for the submission of postmarketing safety reports (see section II of this document), which would be an important step toward improving the agency's systems for collecting and analyzing these reports. The proposal would:

- Eliminate the time and costs associated with submitting paper reports (for industry) and converting data from paper reports into electronic format for review and analysis (for the agency),
- Expedite the agency's access to safety information and provide data to the agency in a format that would support more efficient and comprehensive reviews, and
- Enhance our ability to rapidly communicate information about suspected problems to health care providers, consumers, applicants, and sponsors within the United States and internationally in support of FDA's public health mission.

The proposed rule would require that postmarketing safety reports be submitted to us in an electronic format that we can process, review, and archive. Consistent with FDA's current practice for firms that already submit these reports in electronic format voluntarily, technical specifications referenced in FDA guidance documents will describe how to submit such reports to the agency.[3] As necessary, the agency will revise the technical specifications referenced in FDA guidance documents to address changing technical specifications or any additional specifications that may be needed for mandatory electronic safety reporting. Using guidance documents to communicate these technical specifications will permit FDA to be more responsive to rapidly occurring changes in the technological environment.

Currently, the technical specifications referenced in guidance documents rely upon and adopt certain safety reporting and transmission standards recommended by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). ICH was formed to facilitate the harmonization of technical requirements for the registration of pharmaceutical products among the three ICH regions: The European Union, Japan, and the United States. In this proposed rule, we reaffirm our intention to continue to rely on these ICH-recommended standards, in addition to providing other options (see section II.D.1 of this document). We believe the continued use of ICH standards will promote harmonization of safety reporting among regulatory agencies and facilitate the international exchange of postmarketing safety information. Accordingly, this proposed rule is consistent with ongoing agency initiatives to encourage the widest possible use of electronic technology and to promote international harmonization of safety reporting for human drug and biological products through reliance on ICH standards. (See section II.C.3 of this document for additional discussion of ICH.).

In this document, we provide background information on the current status of FDA's postmarketing safety reporting requirements (current regulations and previously proposed revisions) (sections II.A and II.B of this document). We also discuss the rationale for proposing this rule (section II.C of this document). Additionally, we describe electronic postmarketing safety reporting initiatives (section II.D of this document), including an advanced notice of proposed rulemaking (ANPRM) that we issued in 1998. Finally, we describe the proposed rule (section III of this document).

II. Background

A. Current Postmarketing Safety Reporting Requirements

The current postmarketing safety reporting requirements for drug and biological products are summarized below. The proposed electronic reporting amendments would leave the substantive aspects of these requirements largely unchanged.

1. Description and Timing of Safety Reports

Under existing regulations in part 310, 314, and 600 (21 CFR part 310, 314, and 600), specifically §§ 310.305, 314.80, 314.98, and 600.80, manufacturers, packers, distributors,[4]

[1] For purposes of this preamble, the term *adverse drug experience* includes an *adverse experience* associated with use of a biological product.

[2] Additional information regarding the AERS database may be found at: *http://www.fda.gov/cder/aers/default.htm*.

[3] The most current information on submitting postmarketing safety reports in electronic format can be found in the draft guidance on ''Providing Regulatory Submissions in Electronic Format—Postmarketing Individual Case Safety Reports'' (73 FR 33436, June 12, 2008) and the ''Periodic safety update reports'' section of the guidance on ''Providing Regulatory Submissions in Electronic Format—Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications'' (Revision 2, June 2008). We intend to finalize the draft guidance document in the near future.

[4] For § 600.80, ''distributor'' also includes shared manufacturers, joint manufacturers, or any other participant involved in divided manufacturing.

[5] In this document, the term ''applicant'' is used instead of the term ''licensed manufacturer'' for persons with approved BLAs.

[6] ICSR attachments include published articles that must accompany ICSRs based on scientific literature (§§ 314.80(d) and 600.80(d)), as well as other supporting information such as relevant

Continued

and applicants[5] with approved new drug applications (NDAs), abbreviated new drug applications (ANDAs), and biological license applications (BLAs) and those that market prescription drugs for human use without an approved application are required to submit postmarketing safety reports of adverse drug experiences to FDA. These safety reports include individual case safety reports (ICSRs), and other related documents (ICSR attachments[6]) for each adverse drug experience. An ICSR is a description of the adverse drug experience that includes the basic elements, or facts, of each reportable event for an individual patient or subject. Under the current regulations, persons who submit safety reports on paper must use the approved reporting form for ICSRs—either the FDA Form 3500A or an equivalent form as discussed below. Although current regulations do not use the term ICSR, the term is used in FDA and ICH guidances to refer to the adverse drug experience information supplied on the FDA Form 3500A or other approved forms, including those currently submitted in electronic format.[7] Accordingly, we will refer throughout this document to the description of each adverse drug experience related to an individual patient or subject using human drug or biological products as an ICSR. As discussed in section III.E of this document, consistent with the proposed change to a mandatory electronic format for safety reports, we propose to delete most references to the paper forms (e.g., FDA Form 3500A) from FDA postmarketing safety reporting regulations and to add: (1) A definition of ICSR for drugs and biologics and (2) a statement of the information required to be reported in an ICSR.

a. *15-day Alert reports.* FDA regulations require manufacturers, packers, distributors, and applicants to submit an ICSR on FDA Form 3500A, or its equivalent, for each postmarketing adverse drug experience that is both serious and unexpected to the agency within 15 calendar days of initial receipt of information about the adverse drug experience (15-day ''Alert reports''). An unexpected adverse drug experience is any adverse drug experience that is not listed in the current labeling for the product (§§ 310.305(b), 314.80(a), and 600.80(a)). Followup reports are required to be submitted within 15 calendar days of receipt of new information or as requested by FDA, and are also submitted on an FDA Form 3500A or on an equivalent form. In addition to the ICSR, 15-day Alert reports frequently include related documents, such as medical records, hospital discharge summaries, or other documentation related to the event (ICSR attachments).

To avoid duplication of reports, nonapplicant manufacturers, packers, and distributors of drug and biological products having an approved application may, under §§ 314.80 and 600.80, submit all reports of serious adverse drug experiences to the applicant within 5 calendar days of receipt of the report instead of to FDA. Similarly, packers and distributors of prescription drug products marketed without an approved application may meet their postmarketing 15-day safety reporting obligations under § 310.305 by submitting all reports of serious adverse drug experiences to the manufacturer within 5 calendar days of the receipt of the information instead of to FDA. Applicants/manufacturers receiving such data must then, in turn, submit a 15-day Alert report to FDA.

b. *Periodic reports.* In addition to 15-day Alert reports, applicants are also required to submit postmarketing periodic safety reports to FDA. For each approved application, applicants are required under §§ 314.80 and 600.80 to submit a periodic report quarterly or annually, depending on how long the drug or biological product has been approved. Upon written notice, the agency can require that an applicant submit these reports to FDA at different times than those stated. These reports contain the following information: (1) A narrative summary and analysis of the information in the report, (2) an analysis of all of the 15-day Alert reports submitted during the reporting interval, (3) an ICSR (and ICSR attachments, if applicable) for each adverse drug experience not previously reported (i.e., reports of all serious, expected (labeled) and nonserious events)[8], and (4) a history of actions taken since the last periodic report because of the reports of adverse drug experiences. The descriptive information portions of a postmarketing periodic safety report (report summary, analysis of 15-day Alert reports, and history of actions) are submitted to the agency in a narrative format accompanied by the ICSRs and any ICSR attachments for all serious, expected and nonserious adverse drug experiences that occurred during the reporting period. Manufacturers of drugs marketed without an approved application (e.g., NDA, ANDA) are not required to submit postmarketing periodic safety reports to FDA.

c. *Distribution reports.* In addition to periodic reports, under § 600.81, applicants with approved BLAs are also required to submit distribution reports to the agency every 6 months or at other intervals that the agency may specify with written notice. These reports contain information about the quantity of biological product distributed under the BLA, including the quantity distributed to distributors.

d. *Nonprescription human drug products marketed without an approved application.* Public Law 109–462, enacted on December 22, 2006, amended the Federal Food, Drug, and Cosmetic Act (the act) to create a new section 760 (21 U.S.C. 379aa), entitled ''Serious Adverse Event Reporting for Nonprescription Drugs.'' Section 760 of the act requires manufacturers, packers, or distributors whose name appears on the label of nonprescription human drug products marketed without an approved application to report serious adverse events associated with their products. Effective December 22, 2007, section 760 of the act requires these reports to be submitted to FDA within 15 business days. As required by section 2(e)(3) of Public Law 109–462, FDA issued a draft guidance for industry entitled ''Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products Marketed without an Approved Application'' (72 FR 58316, October 15, 2007). The draft guidance describes the minimum data elements and the relevant policies and procedures for making these reports under section 760 of the act. It provides, among other things, that the reports be submitted on paper on FDA Form 3500A or in the electronic format described in the guidance.

This proposed rule does not contain language that would require that safety reports under section 760 of the act for nonprescription human drug products marketed without an approved application be submitted to FDA in electronic format. However, we are soliciting public comment on whether the final rule should require the use of electronic format for these reports. We expect that any electronic format requirements for these section 760

hospital discharge summaries and autopsy reports/death certificates.

[7] Health Level Seven (HL7), a technical-standards group accredited by the American National Standards Institute (ANSI), also uses the term ICSR to describe adverse event information supplied for FDA regulated products.

[8] In some cases, applicants may request a waiver for submission of an ICSR for nonserious, expected adverse drug experiences. See section XI.A of FDA's draft guidance for industry on ''Postmarketing Safety Reporting for Human Drug and Biological Products Including Vaccines'' available on the Internet at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* under ''Procedural.''

reports would be quite similar to the requirements for other categories of drug products addressed by this rule. Any decision whether to include section 760 reports will be informed by the public comments submitted in response to this proposal and the agency's experience since submission of serious adverse event reports for nonprescription human drug products marketed without an approved application became mandatory in December 2007.

Finally, note that nonprescription drugs that are marketed under approved applications (NDAs or ANDAs) are not covered under section 760 of the act. Such products are subject to reporting under current §§ 314.80 and 314.81. Reports submitted to FDA under those sections would be subject to the mandatory electronic format requirements proposed in this rule as described elsewhere in this document.

2. Current Format for the Submission of Postmarketing Safety Reports

a. *Drug and biological products.* FDA currently accepts all postmarketing ICSRs in either a paper format or an electronic format. Sections 310.305(d), 314.80(f), and 600.80(f) authorize use of a paper FDA Form 3500A for reporting of single cases of adverse drug experiences for human drug and biological products. The regulations also permit use of the form introduced by the World Health Organization's (WHO's) Council for International Organizations of Medical Sciences (CIOMS) Working Group I for reporting single cases of foreign adverse drug experiences that are serious and unexpected (CIOMS I form).

Section 11.2(b)(2) currently provides that regulatory submissions may be voluntarily provided to the agency in electronic form[9] if the submissions are identified by FDA in its electronic submissions public docket as submissions the agency will accept in electronic form.[10] Postmarketing safety reports for drug and nonvaccine biological products have been identified in the docket as submissions the agency can accept in electronic format. See Memorandums 23 and 28 in FDA's electronic submissions public docket. If the reporter elects to file the safety report in electronic format rather than on paper, current §§ 310.305(d), 314.80(f), and 600.80(f) require that the ICSRs in the electronic report include the same information as the paper FDA Form 3500A or CIOMS I form.

Accordingly, under current regulations, an ICSR submission can take the form of a paper FDA Form 3500A, a paper CIOMS I form, or comparable information submitted in electronic format. (See section II.D.1 of this document). Each of these is a different method of transmitting to FDA the same basic elements of the ICSR, whether on paper or in electronic format. As described in section II.D.1.a of this document, ICSR attachments and the descriptive information portions of periodic safety reports may also be submitted electronically.

b. *Vaccine products.* Adverse experience reporting for vaccine products may be submitted to the Vaccine Adverse Event Reporting System (VAERS). VAERS is a computerized information database designed to support the Centers for Disease Control and Prevention's (CDC's) and FDA's postmarketing surveillance program for vaccine products. Postmarketing ICSRs for vaccines can be submitted on a VAERS paper form[11] or reported on-line using the VAERS secure web-based system[12]. Each of these is a different method of transmitting to CDC/FDA the same basic elements of the ICSR. Currently, VAERS does not have the capability to receive electronic ICSRs submitted through the FDA's electronic submissions gateway. However, developments are underway to implement this submission capability.

B. Previously Proposed Revisions to the Postmarketing Safety Reporting Requirements

In the **Federal Register** of March 14, 2003 (68 FR 12406), FDA published a proposed rule to amend its safety reporting requirements for human drug and biological products (Safety Reporting Proposed Rule). The agency proposed new definitions and reporting formats and standards for pre- and postmarketing safety reporting as recommended by ICH (see section II.C.3 of this document) and by CIOMS. Some of the proposed amendments were based on the recommendations of ICH, while others were proposed by the agency on its own initiative. With regard to coding of postmarketing ICSRs to standardize safety reports for comparison and analysis, the agency proposed use of the Medical Dictionary for Regulatory Activities (MedDRA) terminology developed by ICH[13]. The agency also proposed to require the submission of new types of postmarketing safety reports to FDA. FDA is currently considering the comments that it has received on the Safety Reporting Proposed Rule. Any new postmarketing safety reports that are required by a safety reporting final rule would be required to be submitted electronically in accordance with this rulemaking, if adopted as final.

C. Rationale for Requiring Electronic Submission of Postmarketing Safety Report

As explained more below, the agency proposes to require that all postmarketing safety reports for human drugs and biological products be submitted in electronic format. By requiring submission of these reports in electronic format, FDA would expedite access to safety information and facilitate international harmonization and exchange of this information. This, in turn, would lead to more efficient reviews of safety data and enhance our ability to rapidly disseminate safety information to health care providers, consumers, applicants, sponsors, and other regulatory authorities in support of FDA's public health mission. In addition, the agency would recognize a significant cost savings by converting the safety reporting system from a paper submission process to an all electronic system that would increase the accuracy of information and reduce the need for manual data entry.

1. Expedited Identification of Emerging Safety Problems

Establishment and maintenance of efficient risk management programs (where appropriate) is an agency priority (see FDA's January 2007 response to the Institute of Medicine (IOM) report on drug safety entitled ''The Future of Drug Safety: Promoting and Protecting the Health of the Public,''

[9] The content of labeling for NDAs, certain BLAs, ANDAs, annual reports, and supplements is currently the only regulatory submission required to be submitted to the agency electronically (68 FR 69009, December 11, 2003).

[10] Docket No. FDA–1992–S–0039 (formerly Docket No. 1992S–0251) can be accessed on the Internet at *http://www.regulations.gov.*

[11] The VAERS form can be accessed on the Internet at *http://secure.vaers.org/vaersdata entryintro.htm.* FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

[12] Report on-line at *https://secure.vaers.org.*

[13] MedDRA is a medically validated medical terminology created by ICH as a cooperative effort between the pharmaceutical industry and regulators from the United States, Europe, and Japan for sharing regulatory information for human medical products and activities (see *www.ich.org/cache/compo/276-254-1.html*). MedDRA establishes a terminology database for use in the regulatory process for medical products and has become the accepted standard for regulatory activities involving adverse drug experiences. Use of MedDRA would serve the public health by facilitating the collection, presentation, and analysis of adverse drug experience information from medical products during clinical and scientific reviews and marketing.

FDA's March 2005 guidance for industry entitled ''Development and Use of Risk Minimization Action Plans,'' and FDA's 2007 Strategic Action Plan).[14] The changes proposed in this rule, if adopted, would improve the agency's management of risks from human drug and biological products by expediting the postmarketing identification and communication of emerging safety information for these products.

Requiring that postmarketing ICSRs be submitted in electronic format would result in reducing the time required for FDA to enter information from a paper safety report into a database for evaluation and analysis. Currently, approximately 60 percent of all ICSRs (i.e., 15-day Alert reports and ICSRs associated with periodic reports[15]) are submitted to FDA on paper for input into the AERS database (approximately 30,000/month). With regard to 15-day Alert reports, approximately one-third are submitted on paper (approximately 8,000/month) to FDA. Fifteen-day Alert reports that are submitted on paper generally reach FDA's data entry contractor within the required 15 days following the adverse drug experience, but then the ICSRs must be manually entered into the AERS database. These ICSRs are entered into the FDA AERS database on a priority basis because they may indicate a new, previously unidentified risk. The time required for data entry, validation, and quality control processes, however, adds an additional 2 weeks before the ICSRs are actually available for assessment by FDA's safety evaluators. With regard to periodic ICSRs, approximately 80 percent are submitted on paper (approximately 22,000/month).[16] Periodic ICSRs, which are submitted on paper, may not be available for review by safety evaluators for up to 2 months after submission to the agency because of their volume and because ICSRs in 15-day Alert reports must take first priority.

In contrast, the ICSRs in both 15-day Alert and periodic reports submitted in electronic format are processed and available for safety evaluator review much more quickly because there is no need for data entry and the associated quality control and validation processes are faster. Instead of 2 months for periodic ICSRs or 2 weeks for 15-day Alert ICSRs that are submitted in a paper format, ICSRs submitted in electronic format are, generally, available to reviewers within 2 days of their receipt by FDA. The requirement for electronic safety reports is expected to result in faster processing and this will permit FDA to more quickly identify emerging safety issues and rapidly disseminate significant safety information to the medical community and the public with corresponding benefits to the public health.

2. Improved Speed and Efficiency of Industry and Agency Operations

The proposed electronic formatting requirements for postmarketing safety reports would enhance operations for both industry and FDA. Electronic reporting can benefit industry by eliminating the costs associated with collating, copying, storing, retrieving, and mailing paper copies. In addition, FDA would benefit from the elimination of data entry processes and significant reduction in physical storage requirements. When data are provided only on paper, the information must be converted manually into an electronic form to review and analyze. This process is time consuming, costly, and creates an opportunity for data entry error to occur.

FDA expects to provide two options for submitting electronically formatted ICSRs. Reporters would be able to submit ICSRs by using either an ICH-compatible electronic transmission system, or a Web-based form similar to those used for commercial transactions, such as retail purchases, on the Internet. (These options, as well as those for submission of ICSR attachments in electronic form, are discussed in more detail in section II.D.1 of this document.) For companies that submit large numbers of ICSRs, use of the ICH-compatible system for electronic transmission would be cost effective because the information from the ICSRs will be transmitted directly from the company's database to FDA without needing additional administrative support for manual entry of the information. For companies that submit a small number of ICSRs, use of the Web-based form may be more cost effective than using the ICH-compatible system.

FDA has worked with industry on electronic submission of postmarketing ICSRs since 1998. In 2001, FDA announced through public docket number 92S–0251 that the agency would accept voluntary electronic submissions of ICSRs for 15-day Alert and periodic safety reports in lieu of a paper submission (see section II.A.2 of this document). Currently, over 40 pharmaceutical companies are voluntarily using electronic format to submit to FDA ICSRs for both 15-day Alert and periodic reports for human drug and biologics, with more than 500,000 ICSRs submitted to date. This experience has shown that electronic data submissions to the AERS database reduce the cost of data entry and facilitate the review process. It currently costs FDA approximately $35 to process a report submitted on paper. In comparison, a report submitted in an electronic format costs approximately $12 to process.

3. International Harmonization of Safety Reporting

In developing this proposal, FDA considered the international standards developed by ICH for the submission of safety information. The other ICH regions (the European Union (EU) and Japan) are also implementing the standards recommended by ICH for the electronic submission of safety reports. The procedures for the electronic submission of postmarketing safety reports in this proposed rule would, therefore, reduce costs to industry associated with maintaining multiple electronic systems designed to meet the needs of different regulatory authorities. The proposed electronic safety reporting regulations would also encourage better communication between FDA and the industry, as well as with other regulators, nationally and abroad, while reducing the costs associated with reporting. Moreover, the industry would be able to rely on one form of electronic reporting, which would reduce the administrative costs of compliance.

a. *Status of electronic submissions in the EU.* The European Commission drafted guidance on adverse event reporting, including Volume 9 of ''The Rules Governing Medicinal Products in the European Union'' (the EU rules), which contains a specific emphasis on pharmacovigilance. The EU rules require the electronic submission of adverse event reports (effective November 2005) and incorporate international guidelines reached within the framework of the ICH. The EU rules specify that the electronic transmission

[14] These resources are available on the Internet at (IOM response) *http://www.fda.gov/downloads/drugs/drugsafety/postmarketingdrugsafetyinformationforpatientsandproviders/UCM171627.pdf*, (strategic plan) *http://www.fda.gov/ope/stratplan07/stratplan07.htm*, and (guidance) *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*under ''Clinical/Medical.''

[15] See section II.A.1.b of this preamble for a description of periodic ICSRs.

[16] Postmarketing periodic reports are required to be submitted to the FDA for each approved NDA, ANDA, and BLA and are due quarterly for the first 3 years after U.S. approval of the application and annually thereafter. An ICSR in a periodic safety report includes the same elements in the same format as an ICSR in a 15-day Alert report, but describes an adverse drug experience that is not both serious and unexpected (i.e., all nonserious adverse drug experiences or serious, expected adverse drug experiences).

and management of safety reports will be carried out according to the guidelines and specifications contained in ICH guidance on safety reporting and electronic standards.

b. *Status of electronic submissions in Japan.* On October 27, 2003, the Japanese Ministry of Health, Labour, and Welfare mandated that ICH guidance E2BM[17] compliant ICSRs be submitted in electronic format either by the Internet or by physical media.

c. *Global impact of a standard electronic submission.* FDA collaborates with many international regulatory counterparts on drug safety issues. Frequently, FDA sends to and receives from other regulators paper copies of ICSRs for further clinical analysis of specific drug safety issues. FDA envisions that regulatory partners participating in ICH, and other regulators that choose to implement the same standards, will be able to electronically exchange specific ICSRs in real time as safety issues emerge. As a result, regulatory partners would be assured that they are making regulatory decisions based on a full complement of available information.

D. Electronic Format Submission Initiatives

1. Electronic Submission of Postmarketing Safety Reports

a. *Voluntary electronic submissions.* In the **Federal Register** of March 20, 1997 (62 FR 13430), FDA published a regulation on electronic records and electronic signatures (21 CFR part 11). In August 2003, FDA issued guidance for industry entitled ''Part 11, Electronic Records; Electronic Signatures—Scope and Application,'' describing the agency's thinking regarding part 11. Part 11 generally provides that in instances where records are submitted to the agency, such records may be submitted in electronic format instead of paper format, provided that FDA has identified the submission in FDA's electronic submissions public docket as the type of submission that FDA can accept in electronic format. Postmarketing safety reports have been identified in FDA's electronic submissions public docket as submissions that FDA may accept in electronic format[18].

Presently, FDA allows applicants, manufacturers, packers, and distributors to submit postmarketing safety reports (both 15-day Alert and periodic reports) in electronic format by sending the reports to FDA either: (1) Through FDA's Electronic Submission Gateway (ESG) or (2) on physical media, e.g., CD-ROM, digital tape, or floppy disk (sent by mail).[19] These electronic submissions may include ICSRs, any ICSR attachments, and descriptive information. The data elements and electronic transport formats that FDA can accept for electronic ICSRs are described in technical specifications referenced in FDA guidance documents.[20] Currently, FDA can accept attachments to ICSRs and the descriptive information of periodic reports in an electronic form as portable document format (PDF) files, which may be sent through the FDA's ESG or mailed to FDA on physical media.[21] To send these reports by FDA's ESG, a manufacturer/applicant must initially contact FDA's AERS electronic submission coordinator[22] to establish an ESG connection with FDA's network.

b. *ICH standards.* FDA codes and analyzes electronic submissions of safety information received via the ESG or on physical media based on ICH standards.[23] ICH has developed international standards for the electronic submission of safety information that include: (1) Standardized common data elements for transmission of ICSRs (ICH E2B guidance), and (2) electronic standard transmission procedures (ICH M2[24]). ICH E2B guidance provides standardized common data elements for the transmission of ICSRs by identifying and defining the data elements for the transmission of all types of ICSRs, regardless of source and destination. The ICH format for ICSRs includes provisions for transmitting all the relevant data elements useful to assess an individual adverse drug reaction or adverse event report. The common data elements are sufficiently comprehensive to cover complex reports from most sources, different data sets, and different transmission requirements.

c. *FDA Web-based submission portal.* In addition to submission of ICSRs through the ESG, FDA is developing a Web-based electronic submission portal to collect and process safety information for all FDA-regulated products that will be consistent with ICH standards and may be used as another method for reporting adverse drug experiences to the agency.[25] FDA's Web-based portal will allow for the secure electronic submission of postmarketing ICSRs directly into FDA's AERS database once information is typed into a Web-based electronic form. Users will receive electronic confirmation that their submissions have been received by FDA. Any person who is subject to FDA's postmarketing safety reporting requirements and has Internet access will be able to use the Web-based form to submit ICSRs to the agency. The Web-based submission function will assist entities that submit a small number of safety reports by creating a simpler and more efficient mechanism for reporting that does not require them to have an internal database that is compatible with the ICH-based system. However, because some administrative support would be needed to manually enter the information for the ICSRs onto a form on the Web, this Web-based electronic reporting format will be less cost effective than direct submission through the ESG (or submitting the information on physical media) for companies with large numbers of safety reports. As soon as FDA can accept submissions using this Web-based form, information in docket 92S–0251, and the guidance documents described in this section will be updated to reflect this option.

[17] ICH first issued guidance on ''E2B Data Elements for Transmission of Individual Case Safety Reports'' in July 1997 (ICH E2B). ICH E2B was revised in 2000 to include adjustments based on successful pilot projects conducted in the three ICH regions (ICH E2BM). ICH is currently revising its E2B guidance again to provide additional information and clarification and has released ICH E2B(R) in draft. The term ''ICH E2B guidance'' used in this document includes all ICH guidance on the E2B topic of data elements for the transmission of ICSRs. The guidances are available on the Internet at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* under the ICH—Efficacy category or *http://www.fda.gov/cber/guidelines.htm* under the ICH guidance documents category.

[18] Docket No. FDA–1992–S–0039 (formerly Docket No. 1992S–0251) can be accessed on the Internet at *http://www.regulations.gov*.

[19] FDA expects that, in the future, all electronic submissions to the agency will be sent through the ESG and that use of physical media for such submissions will, eventually, be phased-out.

[20] FDA is currently accepting electronic submissions using either the ICH E2B or ICH E2BM data elements; ICH E2B and ICH E2BM are available on the Internet at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* under the ICH—Efficacy category or *http://www.fda.gov/cber/guidelines.htm* under the ICH guidance documents category.

[21] See footnote number 19 in this document.

[22] FDA's AERS electronic submission coordinator may be contacted at *aersesub@fda.hhs.gov*.

[23] See *www.ich.org/cache/compo/276-254-1.html*.

[24] ICH M2 provides electronic standards for the transfer of regulatory information (ESTRI). The M2 ESTRI recommendations facilitate international electronic communication in the three ICH regions. The ICH M2 working group developed a specification for the implementation of E2B data elements that allows for the transmission of all types of ICSRs, regardless of source and destination. ICH M2 recommendations are revised periodically to reflect the evolving nature of the technology. More information on M2 ESTRI is available on the Internet at *http://estri.ich.org*.

[25] The Web-based reporting portal is based on the HL7 Individual Case Safety Report standard accredited by ANSI. This standard is for the exchange of adverse event information between computer systems.

2. Comments on the Advance Notice of Proposed Rulemaking (ANPRM) for Mandatory Electronic Submission of Postmarketing Safety Reports to FDA

In the **Federal Register** of November 5, 1998 (63 FR 59746), FDA issued an ANPRM describing the agency's plans to require electronic submission of all postmarketing expedited and periodic ICSRs. In the ANPRM, the agency indicated that it would propose that international standards be used for electronic safety reporting (i.e., precoding of ICSRs using the ICH M1 international medical terminology, ICH E2B format, and ICH M2 transmission specifications).[26] FDA also indicated that it was considering requiring that the textual (descriptive) information contained in a postmarketing periodic safety report be submitted to the agency in an electronic format. FDA received comments on the ANPRM from 11 representatives of pharmaceutical companies and associations and one individual. The agency considered these comments in developing this proposed rule on electronic submission of postmarketing safety reports.

a. *General*. In general, the comments supported FDA's plans to require electronic submission of postmarketing safety reports, while a few comments said that electronic submissions to the agency should remain voluntary. One comment said that FDA's goal of having all safety reports submitted in an electronic format would be realized without being mandated as electronic record collection, retrieval, and reporting becomes the generally-recognized norm throughout the pharmaceutical and biologics industry.

FDA believes that the electronic submission of postmarketing safety reports should be required and not voluntary because, although we have accepted the voluntary submission of postmarketing safety reports in electronic format since 2001, we are only receiving approximately 40 percent of ICSRs in electronic format. To expedite the identification of emerging safety problems and to realize cost savings for industry and the agency, we will need to receive close to 100 percent of ICSRs in electronic format.

b. *Waivers*. Several comments provided suggestions for waivers (exemptions) from the requirement to submit postmarketing safety reports electronically to FDA. The comments described two types of waivers: (1) Temporary hardship waivers and (2) indefinite waivers.

Two comments requested that FDA grant a temporary hardship waiver for companies that experience unanticipated technical difficulties after implementation of the regulation. In this case, the company would be permitted to submit safety reports in a paper format. One comment said that such temporary waivers must be automatic so that regulatory requirements for timely reporting are fulfilled. The comments said that temporary waivers should be evaluated on an individual basis, taking into account factors such as company size, volume of reports, potential issues with international affiliates, and scope of required technical activities. One comment requested that the waiver be renewable for a 6-month period as long as the company can demonstrate progress towards the ability to submit reports electronically.

With regard to indefinite waivers, four comments said that small businesses should be exempt from the requirement to submit postmarketing safety reports in electronic format. The comments said that a waiver should be based on the number of safety reports that a company submits to FDA. They noted that the number of safety reports can vary significantly among manufacturers based on such attributes as company size and product line. One comment said that generic, or other, drug companies that receive few adverse event reports (e.g., 0–5 adverse drug reactions (ADRs) per week) should be exempt from the requirement. The comment stated that compliance with the requirement would place an undue burden on these drug companies because of the associated costs for human resources, equipment, software requirements, and other costs. The comment further stated that if the agency does not create a waiver for drug companies that have few ADRs per week (e.g., less than 5), then a longer transition period should be permitted, during which the agency would accept either paper or electronic ADRs. The transition period would allow sufficient time for drug companies that currently do not have the appropriate resources to establish electronic safety reporting systems. Another comment said that the criterion for an automatic waiver could be limited to NDAs for products with orphan-designated indications, because of the small number of ADRs submitted for these products. The comment also suggested that drug product sponsors who make less than a particular monetary amount for drug product sales per year (e.g., $100 million) should be exempt from the rule.

Since these comments on the ANPRM were submitted in 1998, Internet access has become commonplace, reducing or eliminating implementation concerns for smaller firms or firms with very few reports. These firms will be able to use the Web-based form. Accordingly, we are not proposing indefinite waivers from implementation of electronic format submission of safety reports.

With regard to temporary waivers, we believe they should only be necessary in rare cases. Larger companies using the ESG could use submission on physical media (i.e., CD-ROM) or the Web-based system as a back-up if they experience temporary technological problems with their ESG submission system. Similarly, smaller firms regularly reporting on the Web-based system could easily find alternative Internet access in the event of a temporary Internet outage at the firm. Given that it is not possible to anticipate all the various situations that might require a waiver, we are proposing in this rule to provide for a temporary waiver of the electronic format submission requirement for good cause shown (see section III.C of this document). As discussed more below, we are specifically requesting comments in this rule on what would constitute ''good cause'' for a temporary waiver of the electronic format submission requirements.

c. *Textual materials*. ICSRs are often accompanied by textual materials (ISCR attachments), such as hospital discharge summaries or other medical records, published studies, or autopsy reports. Two comments supported the possibility of submitting textual materials electronically in addition to ICSRs. One of the comments recommended that the electronic transmission of textual materials be accepted using ICH standards so that consistency could be enhanced worldwide.

As recommended in the technical specifications referenced in guidances on submitting postmarketing safety reports in electronic format, textual materials can currently be submitted in a paper format or in an electronic format as a PDF file consistent with ICH guidelines.[27] When finalized, this rule would require submission of these textual materials in an electronic format we can process, review, and archive. Future changes to technical specifications for such submissions, such as transmission standards and file formats, would be announced in the technical specifications referenced in FDA guidance documents.

[26] The proposal to require coding of ICSRs using MedDRA (ICH M1) is included in a separate rulemaking, the Safety Reporting Proposed Rule, described in section II.B of this document.

[27] See footnote number 3 of this document.

d. *Security issues.* Several comments discussed security issues related to the confidentiality of data when safety reports are submitted electronically. Some comments stated that industry and the agency must be prepared to respond promptly to changing technology to ensure secure transmission of data. Another comment requested that the tools used for this purpose be commercially available at a reasonable cost.

The agency requires the secure transmission of all electronic submissions. We currently have certificate authority with standard encryption and will continue to use this security method in the agency's ESG for the electronic submission of postmarketing safety reports. The ESG meets National Institute of Standards and Technology (NIST)–800[28] series security certification standards.

III. Description of the Proposed Rule

As noted previously, the changes proposed in this rule would, largely, affect the form in which postmarketing safety reports must be submitted to FDA (i.e., in electronic format instead of a paper format) and, in addition, make minor conforming changes to the regulations.

A. Electronic Submission of Postmarketing Safety Reports

The proposal would revise §§ 310.305, 314.80, 314.98, and 600.80 to require that manufacturers, packers, and distributors, and applicants with approved NDAs, ANDAs, and BLAs and those that market prescription drugs for human use without an approved application submit postmarketing safety reports to the agency in an electronic format that FDA can process, review, and archive. We are proposing to delete the specific references to paper reporting forms in §§ 310.305, 314.80, and 600.80. We also propose to add language to these sections which states that FDA will periodically issue guidance on how to provide the electronic submissions (e.g., method of transmission, media, file formats, preparation and organization of files).

Postmarketing 15-day Alert and periodic reports, including the ICSRs, any ICSR attachments and the descriptive information portion of postmarketing periodic safety reports, would be submitted to FDA in an electronic format. Information on the agency's ability to process, review, and archive these reports is described in the technical specifications referenced in FDA guidance documents (see section I of this document). The reports would be submitted to FDA in an electronic format only; paper copies would not be accepted unless the agency granted a temporary waiver (see section III.C of this document).

Under the proposed rule, for marketed products with an approved application, manufacturers, packers, or distributors that do not hold the application would continue to have the option of submitting 15-day Alert reports directly to FDA or to the application holder under §§ 314.80(c)(1)(iii) and 600.80(c)(1)(iii). If they opt to submit directly to FDA, they would be required to do so in electronic format. If they choose to report to the applicant, they could submit the report in any acceptable format. The applicant, however, would be required to use electronic reporting when it subsequently reports the information to FDA. Similarly, for marketed drug products without an approved application, initial safety reports made to the manufacturer by packers and distributors under current § 310.305(c)(3) could be made in any form agreeable to the reporter and the manufacturer, but this proposal would require all safety reports made to FDA to be made in electronic format.

This proposal applies to all postmarketing safety reports currently required to be submitted to FDA under §§ 310.305, 314.80, 314.98, and 600.80 (including vaccines) and would apply to any new postmarketing safety reports for drug or biological products that are implemented in the future (e.g., new postmarketing safety reports proposed in the Safety Reporting Proposed Rule described in section II.B of this document). The proposal would also revise § 600.81 by requiring the electronic submission of biological lot distribution reports. As previously described for postmarketing safety reports, FDA will also periodically issue guidance on how to provide the electronic submissions for these reports (e.g., method of transmission, media, file formats, preparation and organization of files).

B. Safety Reports Not Covered by the Proposed Rule

Postmarketing safety reports for drugs, including vaccines, constitute the largest volume of paper safety reports received by the agency and, consequently, require the most resources to input electronically. This proposed rule would permit more efficient management of these postmarketing safety reports by FDA. This proposed rule would not apply to submission of the following safety reports:

- Investigational new drug application (IND) safety reports (§ 312.32);
- Safety update reports for drugs (§ 314.50(d)(5)(vi)(b));
- Approved NDA and BLA annual reports (§§ 314.81(b)(2) and 601.28 (21 CFR 601.28));
- Biological product deviation reports (BPDRs) (§§ 600.14 and 606.171 (21 CFR 606.171));
- Reports of complications of blood transfusion and collection confirmed to be fatal (21 CFR 606.170(b) and 640.73);
- Adverse reaction reports for human cells, tissues and cellular and tissue-based products (HCT/Ps) regulated solely under section 361 of the Public Health Service Act (42 U.S.C. 264) (21 CFR 1271.350(a)); and
- NDA-field alert reports (§ 314.81(b)(1)).

We have not proposed to require that premarketing safety reports be submitted electronically because IND safety reports are submitted directly to the review division with responsibility for the IND, and are not uploaded into the AERS database. Blood transfusion and collection fatality reports are submitted to the agency in lower numbers than the postmarketing safety reports addressed in this rule; therefore, we have not proposed that these reports be subject to the mandatory electronic format requirements proposed in this rule. The agency has not yet received blood transfusion and collection fatality reports as electronic submissions, but does receive BPDRs through a voluntary electronic submission process. We are considering a mandatory electronic submission requirement for BPDRs, and blood transfusion and collection fatality reports in the near future and would like to receive industry comment on this possibility.

C. Waivers

Although this proposed rule would require that all postmarketing safety reports be submitted to FDA in electronic format, we are proposing in §§ 310.305(e)(2), 314.80(g)(2), and 600.80(g)(2) to grant a temporary waiver from the electronic format requirement for ''good cause'' shown. Procedural details for submitting waiver requests, such as where to send the request and any supporting documentation, would be announced in guidance. When a temporary waiver has been granted, a

[28] NIST, a nonregulatory Federal agency in the U.S. Commerce Department's Technology Administration, promotes U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology, including researching and developing test methods and standards for emerging and rapidly changing information technologies.

paper copy of the safety reports would be required to be submitted in a form that FDA can process, review, and archive.[29] FDA anticipates that temporary waivers of the requirement to submit postmarketing safety reports to the agency in electronic format will only be needed in rare circumstances. Companies experiencing technical difficulties with their ESG interface could, as a backup, submit reports on physical media or using the Web-based form during short-term, temporary outage. Moreover, for companies that rely on the Web-based form, submissions could be made from any computer with an Internet connection, providing ample alternatives should the company experience a longer term interruption of Internet service at its offices. Accordingly, we seek comments on what circumstances would constitute ''good cause'' for granting waivers.

D. Individual Case Safety Report (ICSR)—Definition and Required Information

The term ICSR is used to describe the information contained on either an initial or followup report of an individual adverse drug experience, currently reported on an FDA Form 3500A, CIOMS I form, VAERS form, or in electronic format. Given that this proposed rule would require that all safety reports be submitted in electronic format, we believe describing the safety reporting vehicle generically, rather than by reference to the associated paper form, is appropriate. Accordingly, we are proposing in §§ 310.305(b), 314.80(a), and 600.80(a) (with minor modifications) to define an ICSR as a description of an adverse drug experience related to an individual patient or subject. Because the items of information which should be reported in an ICSR are currently specified on the paper reporting forms that will no longer be used, we are also proposing to add a list of the reportable elements in the regulations. Accordingly, proposed §§ 310.305(d), 314.80(f), and 600.80(f) would provide a detailed list of specific types of information in five broad categories that are to be reported on the ICSR. The proposed categories, and examples of some of the types of information in each category, are as follows:

- Patient information (e.g., patient identification code, age, gender);
- Information about the adverse drug experience (e.g., date and description of the adverse drug experience);
- Information about the drug (e.g., drug name, dose, indication, National Drug Code (NDC) number);
- Information identifying the initial reporter (e.g., name and contact information); and
- Information about the drug's applicant or manufacturer (e.g., name and contact information).

Other than minor wording differences, this proposed list of information to be reported is the same as that currently reflected on the FDA Form 3500A for postmarketing reporting for drugs and biological products. Codification of the ICSR reporting requirements is not intended to change the existing obligation of manufacturers, packers, or distributors to exercise due diligence for purposes of completing all of the applicable elements of an ICSR. The obligation to provide all applicable information described in proposed §§ 310.305(d), 314.80(f), or 600.80(f) would be the same as the current obligation to complete the FDA Form 3500A.[30]

E. Removal of Paper Format Provisions

FDA believes that it is no longer necessary to describe procedures for paper format submissions in its regulations because the agency anticipates that a paper format will be used on a very limited basis, if at all. Accordingly, FDA is proposing to remove from its regulations provisions describing the details for submission of safety reports in paper format, such as the number of required paper copies or specific markings or notations required on the paper forms. We are proposing to delete in §§ 310.305(d), 314.80(f) and 600.80(f) the provisions specifically describing paper submissions and replace them with a new paragraph (proposed §§ 310.305(e)(1), 314.80(g)(1) and 600.80(g)(1)), which states that ICSRs and any attachments must be submitted to FDA in an electronic format that we can process, review, and archive. In addition, we are proposing to revise current regulations to remove or modify the following references or provisions that are specific to paper formats:

- References to the number of paper copies required for safety report submissions (§§ 310.305(c) , 314.80(c), and 600.80(c));
- The requirement to mark paper reports to identify their contents as ''15-day Alert report'' or ''15-day Alert report-followup,'' (§§ 310.305(c)(4), 314.80(c)(1)(iv), 600.80(c)(1)(iv));
- The requirement to use FDA Form 3500A, CIOMS I form, or VAERS form or to determine an appropriate alternative format for *voluntary* submission in electronic format (§§ 310.305(d)(1) and (3); 314.80(f)(1) and (3), and 600.80(f)(1) and (3));
- The reference to FDA Form 3500A or other paper forms designated for adverse drug experience reporting by FDA for ICSRs that are submitted as part of periodic reporting requirements (§§ 314.80(c)(2)(ii)(b) and 600.80(c)(2)(ii)(B)); and
- The requirement for identifying reports of adverse drug experiences that occur in postmarketing studies by separating and marking them (§§ 314.80(e)(2), and 600.80(e)(2)).

As discussed previously in this document, in the future, procedural and formatting details, if applicable to electronic submissions, will be included in guidance, rather than in regulations.

F. Miscellaneous Changes

The proposal would amend §§ 310.305, 314.80, 314.98, and 600.80 by replacing the word ''shall'' with the word ''must'' except in the first sentence of §§ 314.80(c)(1)(iii) and 600.80(c)(1)(iii), from which the word ''shall'' would be removed for editorial reasons. FDA is also proposing to revise in § 314.80(c)(2) the paragraph designations that are currently not in correct format. FDA anticipates that these minor changes will clarify the regulations and make them easier to read. FDA is also proposing to change the term ''licensed manufacturer'' to ''applicant'' in §§ 600.80, 600.81 and 600.90.

Current §§ 310.305(c), 314.80(c), 314.98(b), and 600.80(c) provide mailing addresses for the submission of postmarketing safety reports. FDA is proposing to remove these mailing addresses from its regulations because this information is provided in guidance and it is easier to update guidances when an address changes.

Under current § 310.305(c)(1)(i), each report must be accompanied by a copy of the labeling. We are proposing to revise this section to require the submission of the current content of labeling in electronic format unless it is already on file with FDA.

Currently, ICSRs for all adverse drug experiences other than those reported as 15-day Alert or followup reports (i.e., reports of serious, expected or nonserious adverse drug experiences)

[29] FDA's ability to process, review, and archive postmarketing safety reports submitted to the agency in a paper format is described in FDA's draft guidance for industry on ''Postmarketing Safety Reporting for Human Drug and Biological Products Including Vaccines'' available on the Internet at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* under ''Procedural'' or at *http://www.fda.gov/cber/guidelines.htm*.

[30] For FDA's current thinking on ''due diligence,'' see the guidance described in footnote 29 of this document.

are submitted as a batch as part of the postmarketing periodic safety report for the period during which the events occurred. Although the ICSRs may be generated at any time during the reporting period, they are retained by the applicant during the reporting period and submitted to FDA all at once, along with the other (descriptive) portions of the periodic report. FDA is including language in proposed §§ 314.80(c)(2)(B) and 600.80(c)(2)(B) to give applicants the option of submitting these ICSRs at any time during the reporting period, rather than waiting to submit them in a single batch with the descriptive information. As with current submission procedures, all ICSRs of serious, expected or nonserious adverse drug experiences occurring during the reporting period would still be due to the agency by the time the descriptive information is submitted for that period, but the proposed change would permit them to be filed anytime during the reporting period, rather than all at once with the narrative portion of the periodic report. We understand that many applicants would prefer this added flexibility of submitting the ICSRs on an ongoing basis.

Current postmarketing safety reporting regulations at §§ 310.305(e), 314.80(h), and 600.80(h) state that persons subject to these requirements should not include the names and addresses of individual patients in reports and, instead, should assign a unique code number to each report, preferably not more than eight characters in length. Proposed §§ 310.305(f), 314.80(i), and 600.80(i) would remove the eight character limit from the provision and add that the preferred methodology for determining the identification code would be set forth in technical specifications referenced in FDA guidance documents. Specific details of this type are most appropriate in the technical specifications referenced in FDA guidance documents, which can be more easily revised as technological requirements change. In addition, these provisions require that the entity submitting the report to FDA include in the ICSR the name of the reporter from whom the information was received. We are proposing to add an exception so that the name of the reporter need not be disclosed in situations where the reporter is also the patient.

Current §§ 310.305(c)(1), 314.80(c)(1)(i), and 600.80(c)(1)(i) require that 15-day Alert reports be submitted ''as soon as possible but in no case later than 15 calendar days of initial receipt of the information'' by the person. We propose to revise this language to state ''as soon as possible, but no later than 15 calendar days from initial receipt of the information.'' FDA does not intend this proposed change to have any substantive effect. It is being made solely to simplify the regulatory language and improve its readability.

G. Proposed Implementation Timeframe

FDA proposes that any final rule that may issue based on the proposal become effective 1 year after its date of publication in the **Federal Register**. FDA believes that 1 year is sufficient because many companies are currently submitting their postmarketing safety reports electronically to the agency using ICH standards and more than 1 year is not needed for companies that would choose to set up this system for their submissions. For companies that choose to use the Web-based system, the transition from paper submissions to electronic submissions will be as simple as filling out forms on the Internet and would, therefore, not necessitate more than 1 year to implement. (See section II.D.1.c of this document for discussion.)

IV. Legal Authority

FDA's legal authority to amend its regulations governing the submission of postmarketing safety reports for human drugs and biological products derives from sections 201, 301, 501, 502, 503, 505, 505A, 506, 506A, 506B, 506C, 510, 701, 704, 705, 760, and 801 of the act (21 U.S.C. 321, 331, 351, 352, 353, 355, 355a, 356, 356a, 356b, 356c, 360, 371, 374, 375, 379aa, and 381); and the Public Health Service Act (42 U.S.C. 241, 262, and 264).

V. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the average small entity submits very few safety reports and the agency's proposed Web-based method to submit reports electronically would require little additional cost per report, the agency does not believe that this proposed rule would have a significant economic impact on a substantial number of small entities. FDA requests comment on this issue.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $133 million, using the most current (2008) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

The major benefit of this proposed rule would be to public health and the agency in the form of quicker access to postmarketing safety information and an annual savings of about $2.4 million, including a savings in the cost of paper. Total one-time costs to industry would be between $4.5 million to $5.6 million; most of these costs would be for changing standard operating procedures (SOPs), setting up systems for submissions, and acquiring an electronic certificate. Industry would also incur annual costs of between $133,320 to $139,380 for Internet upgrades and to maintain electronic certificates.

The proposed rule would require the submission of all postmarketing safety reports, including periodic reports, to FDA in an electronic format. It would affect all persons required to submit postmarketing safety reports under §§ 310.305, 314.80, 314.98, 600.80, and 600.81. As currently proposed, this rule would not change the content of the postmarketing safety reports or the frequency of the reporting requirements. The proposal is part of the agency's initiative to adopt electronic technologies to improve the quality of our operations and increase our efficiency.

A regulation is necessary because the majority of the benefits from increased effectiveness of FDA use of adverse drug experience reports will accrue to the agency and to public health, while the costs are borne by industry. Many of the firms lack the private incentive to divert resources to develop electronic submission capabilities on their own. In other words, for many firms the present value of the cost savings from eliminating paper reports is less than the cost of switching to electronic reports. Without this regulation, the agency would need to maintain adequate resources to convert paper reports to electronic records until all companies adopt the electronic submission format, possibly years in the future. Although some part of this proposed rule would merely shift costs of adopting the electronic format from FDA to industry, the additional social benefit arises from the increased speed and effectiveness of FDA analyses and action based on adverse drug experience reports. The need for the regulation stems from the benefits to the public health from more rapid identification and action on unanticipated adverse drug experiences.

FDA currently accepts postmarketing safety reports submitted electronically using ICH standards (i.e., ICH M2 transmission standards and ICH E2BM data elements) (see section II.D.1.b of this document). Both the EU and Japan have mandated electronic submissions for postmarketing safety reports using these standards. The proposed rule would make the FDA's system compatible with the systems used in Japan and the EU. The proposed rule may also increase the use of international data and international comparisons, which could contribute to more rapid identification and action on serious and unexpected adverse drug experiences.

A. Benefits

The proposal would reduce FDA's current costs associated with processing postmarketing safety reports that are received via paper format. By receiving these reports electronically, FDA would be able to access the safety information more quickly and also reduce data entry errors that could occur during entry of the information from the paper reports into our electronic system. The major benefits of this proposed rule would be to the agency and public health in terms of quicker access to postmarketing safety information, which in turn would lead to faster identification of safety problems. The proposed rule would also reduce the agency's costs for converting paper records in a variety of formats into electronic form. Resources that are now used to manually enter the reports into FDA's electronic database could be redirected to monitoring drug safety or other agency initiatives.

Currently, the agency receives more than 445,000 postmarketing ICSRs per year. In fiscal year 2006, approximately 60 percent of ICSRs (15-day Alert and periodic) were submitted in paper form. At this time, it takes from 3 to 14 days before a submitted paper record of a 15-day Alert report is available for analysis in the AERS database. Periodic ICSRs submitted on paper may not be entered into AERS for up to 60 days. With a standardized electronic format, records would become available for analysis in AERS as soon as they were processed by FDA (within 2 days of receipt by the agency).

The agency currently spends about $5.4 million annually on conversion of paper ICSRs to an electronic format, which includes data entry and quality control.[31] The proposal would result in reduced costs associated with controlling and ensuring the quality of the data. Assuming that the number of reports remains fairly constant over time, we estimate that we would save about $2.4 million annually in contracting costs by not having to convert paper copies to an electronic format.

The larger public health benefits—more timely identification of drug safety problems with the potential to reduce subsequent adverse drug experiences—cannot be realized fully until a comprehensive surveillance system and international harmonization of reporting requirements are in place (e.g., implementation of the ICH standards discussed in the Safety Reporting Proposed Rule). Obtaining postmarketing safety reports in an electronic format is an important and necessary step toward attaining the larger public health benefits.

B. Costs

FDA estimates that there are approximately 2,020 firms affected by this rule. Table 1 lists the number of firms affected by type of product marketed. To comply with the proposed rule, firms would incur both one-time and annually recurring costs. One-time costs include modifying SOPs, developing electronic submission capabilities, and training employees on the new procedures. Annually recurring costs would include the cost to maintain an electronic certificate and high-speed Internet access. There would be no change in the actual time required to research and prepare the report, nor would there be any additional reporting requirements as a result of this proposed rule.

As discussed earlier in this preamble, firms marketing nonprescription drug products without an approved application are now subject to safety reporting requirements as a result of Public Law 109–462 (see section II.A.1.d of this document). Although this rule does not propose to require use of an electronic format for submission of these reports, because we are considering such a requirement for the final rule, this analysis includes an estimate of the incremental cost for firms to comply with the submission of these safety reports in an electronic format. While the mandatory reporting requirements are new, analyzing product complaints, including reports of drug induced adverse drug experiences, is a requirement of the Current Good Manufacturing Practice regulations (21 CFR 211.198).

1. One-time costs

a. *Rewriting standard operating procedures and training personnel.* Almost all companies would have to make some changes to their SOPs to reflect the requirements for electronic submission versus mailing the reports to the agency. Most companies that submit postmarketing safety reports to FDA are small and submit few safety reports to the agency; we estimate that it would require about 10 hours to change their SOPs and to train the appropriate employees. Companies with proprietary computer systems used to generate and store safety reports would require considerably more time to modify their SOPs and train the appropriate personnel. We estimate that these firms would require about 50 hours for this task.

We estimate that about 1,520 firms would require 10 hours and about 100 firms would require 50 hours to modify SOPs and train the appropriate personnel. (The firms primarily marketing nonprescription drug products without an approved application are not included in this estimate.) Assuming an average wage rate including benefits of $68 per hour, the total one-time incremental cost for this proposed requirement would be about $1.4 million [(1,520 x 10 hours x $68) + (100 x 50 hours x $68)] (see table 1 of this document).[32]

[31] Cost to convert paper reports to electronic format from FDA AERS data entry contract.

[32] Wage derived from 2007 Bureau of Labor Statistics Occupation Employment Statistics Survey, standard occupation code 11–3042, training manager for pharmaceutical medicine and

Firms producing primarily nonprescription drug products without an approved application will have to establish SOPs for submitting ICSRs. We estimate that it takes between 24 and 40 hours to write a new SOP and another 5 to 10 hours to train the appropriate personnel, depending on the size of the firm.[33] Assuming an average wage cost of $68 per hour, and the mid-point of the range of hours the cost would be about $1.1 million (40 hours x $68 x 400 firms).

b. *Setting up system for submission.* ICSRs would be submitted through FDA's electronic submission gateway (ESG) using one of two methods: One at a time using a Web-based form or by direct transmission through an ICH compatible system. Attachments to the ICSRs, the descriptive information portion of periodic reports and distribution reports would be submitted as PDF files through the ESG. We assumed that because most firms are small and submit few ICSRs, they would use the Web-based form. To comply using this submission method, firms would need high speed Internet connections and would have to download and install up to two free software programs, validate the installation, and train the appropriate personnel on the new procedures. Firms that have dedicated IT staff would be able to install and validate the installation themselves. Smaller firms would probably choose to hire an outside contractor for the installation and validation. We do not have data on the amount of time required to install and validate the installation of the software or the percentage of firms that might need to contract out the installation. For this analysis, we assumed it would take 8 to 16 hours to install and validate the installation of the Java Runtime Edition software and the Java security policy files for the company's Internet browser.[34] This estimate also includes the time required to notify FDA and run a test submission through the FDA ESG and to train the appropriate staff. Based on these assumptions and using the $68 per hour wage the cost for this requirement would range from $1.0 million to $2.1 million (8 hours x $68 wage x 1,920 firms and 16 hours x $68 wage x 1,920 firms).

Firms that submit a large number of reports each year may chose to use the ICH compatible method. This method allows for the submission of multiple reports at faster transmission rates. We do not know at what threshold of reporting it becomes cost effective for a firm to submit reports using this method. Currently just over 40 firms voluntarily submit ICSRs using this method and they account for about one-half of all 15-day Alert reports submitted each year. We assume that only firms that have existing infrastructure to support the ICH method of transmission would choose this method to submit reports. At the time of a final rule we estimate that about 50 firms would be voluntarily using this method of submission and about 100 additional firms would comply with the rule by adopting this method of reporting for an estimated cost of $0.3 million (50 hours x $68 x 150 firms).

c. *Electronic certificate.* All firms would need an electronic certificate to submit any document to the FDA ESG. The electronic certificate identifies the sender and serves as an electronic signature. Firms that have not submitted any electronic documents to the agency would incur a one-time cost to acquire the certificate and recurring costs to keep the certificate active as a result of this proposed rule. The certificates cost about $20 and are good for 1 year. We assume that the search and transactions costs involved in the initial acquisition of the certificate double the cost of the certificate to $40 for the first year, half of which would be set-up costs. We also believe that should this rule become final many firms will already have electronic certificates because they are required for electronic submission of other regulatory documents, such as product applications and supplements. If 60 to 70 percent of the firms needed to acquire an electronic certificate to comply with the proposed requirement, the cost would be between $48,480 and $56,560 ($40 x 1,212 firms and $40 x 1,414 firms, respectively).

In addition to the costs we have estimated, some firms affected by this proposed rule may have to hire outside expertise to install and validate the software installation to comply with the proposed requirements.

d. *Creation of PDF files.* Some companies still maintain safety information as paper records. Companies that store their submissions in paper format rather than electronically may also incur costs to acquire the ability to convert ICSR attachments, the descriptive information portion of periodic reports, and distribution reports to an electronic format that the agency can process, review, and archive. Currently, this is the PDF format. We assume all firms would have the software and training necessary to convert existing electronic files to a PDF format.

We lack sufficient data to estimate with any certainty the costs to convert paper documents to electronic files that can be transmitted through our ESG. We do not know how many companies maintain paper versus electronic records. We also do not know how many have optical scanning capabilities that would allow them to convert the paper records to electronic PDF files.

Because optical scanners are relatively inexpensive and easy to use, they are commonplace in businesses today. We believe that all of the large firms in the industry currently have such equipment and would incur little or no additional incremental costs for this capability. Most large firms currently store much of their information electronically now, and they should require no more than 30 minutes to convert ICSR attachments to PDF files and proof them, which would be offset by the time they currently use for photocopying, collating, and mailing files. For documents the applicant has in paper format, the time required to scan a document would also be offset by no longer having to photocopy, collate, and mail the submission to us.

Companies that maintain their records in a paper format may have to purchase an optical scanner and the appropriate optical character recognition (OCR) software to comply with this requirement, or they could pay a service provider, such as a copy center, to transform the documents into an electronic PDF file. A suitable scanner with OCR software should not cost more than $400. FDA assumes that initial setup and training to use the equipment should require no more than 4 hours. At the wage plus benefits rate of $68 per hour, the one-time cost for setup and training would be about $272 (4 hours x $68). If one-half of the companies affected needed to purchase a scanner and train employees to use it, the total one-time costs would be $0.7 million (($400 + $272) x 1,010) (see table 1 of this document).

To have a service provider convert a black and white paper document to a PDF file would cost about $10 per page for the first page and about $2 per page thereafter. If an applicant wanted the documents saved to a disk, it would cost an additional $20 per transaction.

manufacturing—mean wage rate $48.73 + 40 percent for nonwage benefits and rounded to $68, at *www.bls.gov*.

[33] Eastern Research Group, ''*Economic Threshold and Regulatory Flexibility Assessment of Proposed Changes to the Current Good Manufacturing Practice Regulations for Manufacturing, Processing, Packing, or Holding Drugs*,'' submitted to the Office of Planning and Evaluation, March 1995.

[34] See *http://www.fda.gov/esg/default.htm#tutorials* and *http://www.fda.gov/esg/account.htm*.

Safety report submissions differ greatly in the number of attachments and number of pages submitted depending on the nature of the adverse drug experience and the drug involved. We do not have an estimate of the number of pages of attachments in an average report. However, if an applicant used a service provider to convert 20 pages of material and had it saved to a disk, it would cost about $70 ($10 first page + ($2 x 19 pages) + $20 to save to disk).

The total one-time incremental costs of this proposed rule would be between $4.5 million and $5.6 million. About $1.4 million to $1.7 million of this total would be incurred by the firms that primarily market nonprescription drug products without an approved application. (table 1 of this document).

2. Annual costs

The annual costs of this proposed rule would include the costs of maintaining electronic certificates and the increased cost for some firms to obtain high-speed Internet access.

a. *Maintaining the electronic certificate*. Firms would have an annual cost to renew the electronic certificate that identifies the sender. In addition to having to renew the certificate on a regular basis, firms that seldom submit reports would also have to ensure they are capable of transmitting data to the agency. To add these additional costs to the cost of the certificate itself, we assume that firms incur an additional annually recurring cost equal to one-half the price of the certificate ($10), for a total annually recurring cost of $30. Assuming that 60 to 70 percent of the firms would not voluntarily submit any required documents electronically without a regulation, the annual cost to maintain certificates would range from $36,360 and $42,420 ($30 x 1,212 firms or $30 x 1,414 firms).

b. *High-Speed Internet access*. Firms will need high-speed Internet access to use either of the submission methods. A 2004 study of small businesses sponsored by the Small Business Administration found that essentially all small firms in the United States had Internet access and about 50 percent had high-speed Internet access.[35] The average cost of high-speed access was about $40 per month more than dial-up access. Because of the nature of the drug industry and because the average cost of Internet access has been going down over time, we estimate that by the time this proposed rule would be made final, about 90 percent of firms would have high speed access. The average annual recurring increase in cost for high speed Internet access for the remaining 10 percent of firms would be $96,960 ($40 x 12 months x 202 firms).

Table 2 shows the annual costs of the proposed rule. As with the one-time costs, only firms not already making electronic submission of any kind to the agency when this proposed rule becomes final would incur these costs.

C. Summary of Benefits and Costs

The principal benefit of this proposed rule would be the public health benefits associated with more rapid processing and analysis of the almost 300,000 ICSRs currently submitted on paper. In addition, requiring electronic submission would reduce FDA annual operating costs by $2.4 million.

The total one-time cost for modifying SOPs and establishing electronic submission capabilities is estimated to range from $4.5 million to $5.6 million. Annually recurring costs totaled $133,320 to $139,380 and included maintenance of electronic submission capabilities, including renewing the electronic certificate, and for some firms the incremental cost to maintain high-speed Internet access. The total annualized cost of the proposed rule, assuming a 7-percent discount rate over 10 years, would be from $0.8 million to $0.9 million ($0.7 million to $0.8 million at a 3-percent discount rate). We request comment on the accuracy and completeness of the assumptions used to estimate the costs of this proposed rule, including our choice of a 10 year time horizon.

D. Alternatives Considered

During the development of this proposed rule, we considered a number of alternative approaches. The first was to allow persons to voluntarily submit reports electronically. This option is currently available and our experience has shown that a number of companies would resist changing their procedures for a long time. As a result, we would not attain the benefits of standardized formats and quicker access to adverse drug experience data with voluntary electronic submissions.

Another alternative was to allow small entities a longer period of time to comply with the electronic submission requirements. This alternative would have allowed small entities to delay the expense of compliance. This alternative would delay our receiving the full benefits of quicker access to these reports. Compliance costs for small entities are estimated to be low, less than $2,260 in one-time costs (sum of cost for equipment, training, and changing SOPs), which should not impose an economic hardship on the small entities.

We also considered requiring electronic submissions but not specifying a format. This alternative would reduce the costs to firms associated with paper. Because receiving reports in many different formats would continue to require the agency to convert the reports into a standard format for analysis, this alternative would delay the full public health benefits of quicker FDA access to these reports.

E. Small Business Impact

The Small Business Administration defines an entity in the pharmaceutical industry as small if it has fewer than 750 employees and a biologic entity as small if it has fewer than 500 employees. Based on this definition about 90 percent of the drug and biologic entities are small. The impact on each entity will vary depending on their electronic submission capabilities when the rule is made final. Much of the incremental cost and all of the recurring costs of this proposed rule are for acquiring and maintaining electronic submission capability ($1,236 to $1,780 in one-time costs and up to $510 in annually recurring costs per small entity). Only firms that have not made any electronic submissions to the agency when this rule becomes final would incur those costs. The writing of SOPs and employee training are the only costs that are specific to this rule (a one-time cost of about $680 per small entity).

Because the estimated incremental costs per entity are low, between $1,916 and $2,460 in one-time incremental costs and up to $510 in annually recurring costs, and the majority of those costs would be incurred for any electronic submission across the agency, this proposed rule would probably not have a significant economic impact on a substantial number of small entities. However, because we lack data to fully characterize the small entities and the average submittal, we do not certify that there will be no significant impact at this time. We request comment on the tentative conclusion of no significant impact.

[35] Pociask, Steve, ''*A Survey of Small Businesses' Telecommunications Use and Spending*,'' Small Business Administration Office of Advocacy contract number SBA–HQ–02–M–0493, March 2004.

TABLE 1.—ONE-TIME COSTS BY FIRM TYPE[1]

Type of Firm	Total number of firms	Establishing e-submission capability				Acquiring e-certificate[1]		PDF files	Total	
		Modifying SOPs	Low	High	ICH Method	Low	High		low	high
Drug and biologic products subject to parts 310, 314, and 600	600	$680,000	$272,000	$544,000	$340,000	$7,200	$8,400	$201,600	$1,500,800	$1,774,000
Nonprescription drug products marketed without an approved application	400	1,088,000	217,000	435,200		4,800	5,600	134,400	1,444,800	1,663,200
Medical Gas	1,020	693,300	554,880	1,109,760		12,240	14,280	342,720	1,603,440	2,160,360
Total	2,020	$2,461,600	$1,044,480	$2,088,960	$340,000	$24,240	$28,280	$678,720	$4,549,040	$5,597,560
Annualized at 3% over 10 years									$553,286	$656,205
Annualized at 7% over 10 years									$647681	$796,967

[1]This refers to the $20 one-time cost involved in acquiring the certificate, the actual cost of the certificate is captured in the annual recurring costs (table 2 of this document).

TABLE 2.—ANNUAL RECURRING COSTS

Type of Firm	Electronic Certificate		Internet access	Total	
	Low	High		Low	High
Drug and biologic products subject to parts 310, 314, and 600	$10,800	$12,600	$28,800	$39,600	$41,400
Nonprescription drug products marketed without an approved application	7,200	8,400	19,200	26,400	27,600
Medical Gas	18,360	21,420	48,960	67,320	70,380
Total	$36,360	$42,420	$96,960	$133,320	$139,380

VII. Paperwork Reduction Act of 1995

This proposed rule contains collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 3520). ''Collection of information'' includes any request or requirement that persons obtain, maintain, retain, or report information to the agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)). The title, description, and respondent description of the information collection are shown under this section with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

We invite comments on these topics: (1) Whether the collection of information is necessary for proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Postmarketing Safety Reports for Human Drug and Biological Products: Electronic Submission Requirements.

Description: The proposed rule would amend FDA's postmarketing safety reporting regulations for human drug and biological products, under parts 310, 314 and 600, to require that persons subject to mandatory reporting requirements submit safety reports in an electronic format that FDA can process, review, and archive. Under §§ 310.305, 314.80, 314.98 and 600.80, manufacturers, packers, and distributors, and applicants with approved NDAs, ANDAs and BLAs and those that market prescription drugs for human use without an approved application must currently submit postmarketing safety reports to the agency. Under § 600.81, applicants with approved BLAs must currently submit biological lot distribution reports to the agency. In this rule, FDA is proposing to require that these postmarketing reports be submitted to the agency in an electronic format that FDA can process, review and archive. We also propose to add language to these sections which states that FDA will periodically issue guidance on how to provide the electronic submissions (e.g., method of transmission, media, file formats, preparation and organization of files). This rule does not change the content of these postmarketing reports. It only proposes to require that they be submitted in an electronic form. Under §§ 310.305(e)(2), 314.80(g)(2), 600.80(g)(2), and 600.81(b)(2), we are also proposing to permit manufacturers, packers, and distributors, and applicants with approved NDAs, ANDAs and BLAs and those that market prescription drugs for human use without an approved application to request a waiver from the electronic format requirement.

We currently have OMB approval for submission of postmarketing safety reports to FDA under parts 310, 314,

and 600. The information collection for part 310 and part 314 is approved under OMB Control Numbers 0910–0291 (Form 3500A) and 0910–0230. The information collection for part 600 is approved under OMB Control Numbers 0910–0291 (Form 3500A) and 0910–0308. We do not expect that the burdens currently estimated, under parts 310, 314 and 600, for submission of postmarketing safety reports to FDA for human drugs and biological products would change as a result of this proposed rule. This is because: (1) Current burden estimates associated with these regulatory requirements have taken into account voluntary submission of these reports in an electronic format and those applicants, manufacturers, packers, and distributors that already submit these reports in an electronic format would have no new reporting burdens, and (2) new burdens for establishing the means for submitting postmarketing safety reports in electronic form to comply with this proposed rule, including obtaining an electronic certificate, revising SOPs, and familiarity with the system, would be negated by the savings in burden from not having to print out the report and mail it to FDA. These assumptions also apply to applicants submitting biological lot distribution reports under proposed § 600.81. We invite comment on the number of respondents not currently submitting safety reports in electronic format who would need to convert from paper submission. We also invite comment on the reduction in burden associated with not printing out reports and mailing them to FDA and whether this burden reduction is offset by the cost associated with obtaining an electronic certificate, revising SOPs, and familiarizing firms with the system.

Manufacturers, packers, or distributors whose name appears on the label of nonprescription human drug products marketed without an approved application are now required to submit reports of serious adverse events to FDA (see section II.A.1.d of this document). Even though we are not proposing to require that these reports be submitted to FDA in an electronic form at this time, we are considering including such a requirement in the final rule. OMB has recently approved the burden associated with these submissions under OMB Control Number 0910–0636.

In table 3 of this document, we have estimated the burdens associated with submission of waivers, under proposed §§ 310.305(e)(2), 314.80(g)(2), 600.80(g)(2), 600.81(b)(2) and 21 U.S.C. 379aa((b) and (c)). We expect very few waiver requests (see section III.C of this document). We estimate that approximately one manufacturer would request a waiver annually under §§ 310.305(e)(2), 600.81(b)(2), and 21 U.S.C. 379aa((b) and (c)), and five manufacturers would request a waiver annually under §§ 314.80(g)(2) and 600.80(g)(2). We estimate that each waiver request would take approximately 1 hour to prepare and submit to us.

Description of Respondents: Manufacturers, packers, and distributors, and applicants with approved NDAs, ANDAs and BLAs and those that market prescription drugs for human use without an approved application.

Burden Estimate: Table 3 of this document provides an estimate of the annual reporting burden for submitting requests under the proposed waiver requirement in this rule.

A. Reporting Cost

TABLE 3.—TOTAL ESTIMATED ANNUAL BURDEN FOR THIS PROPOSED RULE

21 CFR Sections	Number of Respondents	Number of Responses Per Respondent	Total Annual Responses	Hours per Response	Total Hours
Waivers					
310.305(e)(2)	1	1	1	1	1
314.80(g)(2)	5	1	5	1	5
600.80(g)(2)	5	1	5	1	5
600.81(b)(2)	1	1	1	1	1
21 U.S.C. 379aa((b) and (c))	1	1	1	1	1
Total Reporting Burden					13

Based on the average hourly wage as calculated in section VI (Analysis of Impacts) of the proposed rule ($68), the cost to respondents would be $884 (13 X $68).

Tables 4 through 7 of this document provide an estimate of the annual reporting burden currently covered under existing OMB Control Numbers 0910–0291, 0910–0230, 0910–0308, and 0910–0636. As explained previously, we believe that any burden increases associated with electronic reporting are offset by burden decreases associated with not printing out reports and mailing them to FDA. Therefore, we believe that the burden estimates for these information collections will not change.

TABLE 4.—OMB CONTROL NUMBER 0910–0291

21 CFR Sections	Number of Respondents	Number of Responses Per Respondent	Total Annual Responses	Hours per Response	Total Hours
Form 3500A (§§ 310.305, 314.80, 314.98, & 600.80)	600	765	459,102	1.1	505, 012

Based on the average hourly wage as calculated in section VI (Analysis of Impacts) of the proposed rule ($68), the cost to respondents would be $34,340,816 (505,012 x $68).

TABLE 5.—OMB CONTROL NUMBER 0910–0230

21 CFR Sections	Number of Respondents	Number of Responses Per Respondent	Total Annual Responses	Hours per Response	Total Hours
310.305(c)(5)	1	1	1	1	1
314.80(c)(2)	642	17.88	11,478	60	688,680
Total					688,681

Based on the average hourly wage as calculated in section VI (Analysis of Impacts) of the proposed rule ($68), the cost to respondents would be $46,830,308 (688,681 x $68).

TABLE 6.—OMB CONTROL NUMBER 0910–0308

21 CFR Sections	Number of Respondents	Number of Responses Per Respondent	Total Annual Responses	Hours per Response	Total Hours
600.80(c)(1) & 600.80(e)	88	270.85	23,835	1	23,835
600.80(c)(2)	88	248.55	21,872	28	612,416
600.81	88	2.03	179	1	179
Total					636,430

Based on the average hourly wage as calculated in section VI (Analysis of Impacts) of the proposed rule ($68), the cost to respondents would be $43,277,240 (636,430 x $68).

TABLE 7.—OMB CONTROL NUMBER 0910–0636

21 CFR Sections	Number of Respondents	Number of Responses Per Respondent	Total Annual Responses	Hours per Response	Total Hours
Reports of serious adverse drug events (21 U.S.C. 379aa((b) and (c))	50	250	12.500	2	25,000
Total					25,000

Based on the average hourly wage as calculated in section VI (Analysis of Impacts) of the proposed rule ($68), the cost to respondents would be $1,700,000 (25,000 x $68).

B. Capital Costs

As explained in section VI (Analysis of Impacts) of this document, total one-time costs to industry under this rule would be between $4.5 million to $5.6 million; most of these costs would be for changing SOPs, setting up systems for submissions, and acquiring an electronic certificate. Industry would also incur annual costs of between $133,320 to $139,380 for Internet upgrades and to maintain electronic certificates.

The information collection provisions of this proposed rule have been submitted to OMB for review. Interested persons are requested to fax comments regarding information collection by (see **DATES** section of this document), to the Office of Information and Regulatory Affairs, OMB. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should reference the title of this rule and include the FDA docket number found in brackets in the heading of this document.

VIII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 310, 314, and 600 be amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

2. Section 310.305 is amended by:

a. Removing the word ''shall'' each time it appears and by adding in its place the word ''must'';

b. Adding alphabetically in paragraph (b) the definition of ''Individual case safety report (ICSR)'';

c. Revising paragraph (c) introductory text, paragraph (c)(1)(i), and the second sentence of paragraph (c)(3) introductory text; removing the last sentence in paragraph (c)(2), and removing and reserving paragraph (c)(4);

d. Revising paragraph (d); and

e. Redesignating paragraphs (e) through (g) as paragraphs (f) through (h), adding a new paragraph (e), revising newly redesignated paragraph (f), and in newly redesignated paragraph (g)(1) remove ''(c)(4)'' and add in its place ''(c)(3)'' to read as follows:

§ 310.305 Records and reports concerning adverse drug experiences on marketed prescription drugs for human use without approved new drug applications.

* * * * *

(b) * * *

Individual case safety report (ICSR). A description of an adverse drug experience related to an individual patient or subject.

(c) *Reporting requirements.* Each person identified in paragraph (c)(1)(i) of this section must submit to FDA adverse drug experience information as described in this section. Except as provided in paragraph (e)(2) of this section, 15-day ''Alert reports'' and followup reports, including ICSRs and any attachments, must be submitted to the agency in electronic format as described in paragraph (e)(1) of this section.

(1) *Postmarketing 15-day ''Alert reports''.* (i) Any person whose name appears on the label of a marketed prescription drug product as its manufacturer, packer, or distributor must report to FDA each adverse drug experience received or otherwise obtained that is both serious and unexpected as soon as possible, but no later than 15 calendar days from initial receipt of the information by the person whose name appears on the label. Each report must be accompanied by the current content of labeling in electronic format unless it is already on file at FDA.

* * * * *

(3) * * * If a packer or distributor elects to submit these adverse drug experience reports to the manufacturer rather than to FDA, it must submit, by any appropriate means, each report to the manufacturer within 5 calendar days of its receipt by the packer or distributor, and the manufacturer must then comply with the requirements of this section even if its name does not appear on the label of the drug product.

* * *

* * * * *

(4) [Reserved]

* * * * *

(d) *Information reported on ICSRs.* ICSRs include the following information:

(1) *Patient information.*

(i) Patient identification code;

(ii) Patient age at the time of adverse drug experience, or date of birth;

(iii) Patient gender; and

(iv) Patient weight.

(2) *Adverse drug experience.*

(i) Outcome attributed to adverse drug experience;

(ii) Date of adverse drug experience;

(iii) Date of report;

(iv) Description of adverse drug experience;

(v) Description of relevant tests, including dates and laboratory data; and

(vi) Other relevant patient history, including preexisting medical conditions.

(3) *Suspect medication(s).*

(i) Name;

(ii) Dose, frequency, and route used;

(iii) Therapy dates;

(iv) Diagnosis for use (indication);

(v) State whether adverse drug experience abated after drug use stopped or dose reduced;

(vi) Lot number;

(vii) Expiration date;

(viii) State whether adverse drug experience reappeared after reintroduction of drug;

(ix) NDC number; and

(x) Concomitant medical products and therapy dates.

(4) *Initial reporter information.*

(i) Name, address, and phone number;

(ii) Whether the initial reporter is a health professional;

(iii) Occupation; and

(iv) Whether the initial reporter also sent a copy of the report to FDA.

(5) *Manufacturer, packer, or distributor information.*

(i) Manufacturer, packer, or distributor name and contact office address;

(ii) Telephone number;

(iii) Report source(s) (e.g., literature, study);

(iv) Date received by manufacturer, packer, or distributor;

(v) Basis for marketing if nonapplication product;

(vi) Type of report being submitted (e.g., 15-day, periodic, followup);

(vii) Adverse drug experience term(s); and

(viii) Manufacturer report number.

(e) *Electronic format for submissions.* (1) Each report required to be submitted to FDA under this section, including the ICSR and any attached documentation, must be submitted in an electronic format that FDA can process, review, and archive. FDA will periodically issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation and organization of files).

(2) *Waivers.* Each person identified in paragraph (c)(1)(i) of this section may request, in writing, a temporary waiver of the requirements in paragraph (e)(1) of this section. These waivers will be granted on a limited basis for good cause shown. If the agency grants the waiver, the person must submit the reports required under paragraph (c) of this section on paper within the required time periods in a form that

FDA can process, review, and archive. FDA will issue guidance on how to provide the paper submission. Procedures for how to request waivers of this requirement will be set forth in guidance.

(f) *Patient privacy.* Manufacturers, packers, and distributors should not include in reports under this section the names and addresses of individual patients; instead, the manufacturer, packer, and distributor should assign a unique code to each report. The preferred methodology for determining the identification code will be set forth in guidance. The manufacturer, packer, and distributor should include the name of the reporter from whom the information was received, unless the reporter is the patient. The names of patients, individual reporters, health care professionals, hospitals, and geographical identifiers in adverse drug experience reports are not releasable to the public under FDA's public information regulations in part 20 of this chapter.

* * * * *

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

3. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 356a, 356b, 356c, 371, 374, 379e.

4. Section 314.80 is amended:

a. By removing the word ''shall'' each time it appears and by adding in its place the word ''must'';

b. In paragraph (a) by alphabetically adding the definition for ''Individual case safety report (ICSR)'';

c. In paragraph (c)(1)(i) by removing the phrase ''in no case later than 15 calendar days of'' and by adding in its place the phrase ''no later than 15 calendar days from'';

d. By removing the last sentence of paragraph (c)(1)(ii);

e. By removing paragraph (c)(1)(iv);

f. By revising paragraph (c) introductory text, the first and third sentences of paragraph (c)(1)(iii) introductory text, and paragraph (c)(2)(ii);

g. By removing paragraph (d)(2) and by redesignating paragraph (d)(1) as paragraph (d) and revising the first sentence of paragraph (d);

h. By removing paragraph (e)(2) and by redesignating paragraph (e)(1) as paragraph (e);

i. By revising paragraph (f);

j. By redesignating paragraph (g) through paragraph (k) as paragraph (h) through paragraph (l); and revising newly redesignated (i);

k. By adding new paragraph (g) to read as follows:

§ 314.80 Postmarketing reporting of adverse drug experiences.

(a) * * *

Individual case safety report (ICSR). A description of an adverse drug experience related to an individual patient or subject.

* * * * *

(c) *Reporting requirements.* The applicant must submit to FDA adverse drug experience information as described in this section. Except as provided in paragraph (g)(2) of this section, these reports must be submitted to the agency in electronic format as described in paragraph (g)(1) of this section.

(1) * * *

(iii) *Submission of reports.* The requirements of paragraphs (c)(1)(i) and (c)(1)(ii) of this section, concerning the submission of postmarketing 15-day Alert reports, also apply to any person other than the applicant whose name appears on the label of an approved drug product as a manufacturer, packer, or distributor (nonapplicant). * * * If a nonapplicant elects to submit adverse drug experience reports to the applicant rather than to FDA, the nonapplicant must submit, by any appropriate means, each report to the applicant within 5 calendar days of initial receipt of the information by the nonapplicant, and the applicant must then comply with the requirements of this section. * * *

* * * * *

(2) * * *

(ii) Each periodic report is required to contain:

(A) *Descriptive information.* (*1*) A narrative summary and analysis of the information in the report;

(*2*) An analysis of the 15-day Alert reports submitted during the reporting interval (all 15-day Alert reports being appropriately referenced by the applicant's patient identification code, adverse reaction term(s), and date of submission to FDA);

(*3*) A history of actions taken since the last report because of adverse drug experiences (for example, labeling changes or studies initiated); and

(*4*) An index consisting of a line listing of the applicant's patient identification code, and adverse reaction term(s) for all ICSRs submitted under paragraph (c)(2)(ii)(B) of this section.

(B) *ICSRs for serious, expected and nonserious adverse drug experiences.* An ICSR for each adverse drug experience not reported under paragraph (c)(1)(i) of this section (all serious, expected and nonserious adverse drug experiences). All such ICSRs must be submitted to FDA (either individually or in one or more batches) within the timeframe specified in paragraph (c)(2)(i) of this section. ICSRs must only be submitted to FDA once.

* * * * *

(d) *Scientific literature.* A 15-day Alert report based on information in the scientific literature must be accompanied by a copy of the published article. * * *

* * * * *

(f) *Information reported on ICSRs.* ICSRs include the following information:

(1) *Patient information.*

(i) Patient identification code;

(ii) Patient age at the time of adverse drug experience, or date of birth;

(iii) Patient gender; and

(iv) Patient weight.

(2) *Adverse drug experience.*

(i) Outcome attributed to adverse drug experience;

(ii) Date of adverse drug experience;

(iii) Date of report;

(iv) Description of adverse drug experience;

(v) Description of relevant tests, including dates and laboratory data; and

(vi) Other relevant patient history, including preexisting medical conditions.

(3) *Suspect medication(s).*

(i) Name;

(ii) Dose, frequency, and route used;

(iii) Therapy dates;

(iv) Diagnosis for use (indication);

(v) State whether adverse drug experience abated after drug use stopped or dose reduced;

(vi) Lot number;

(vii) Expiration date;

(viii) State whether adverse drug experience reappeared after reintroduction of drug;

(ix) NDC number; and

(x) Concomitant medical products and therapy dates.

(4) *Initial reporter information.*

(i) Name, address, and phone number;

(ii) Whether the initial reporter is a health professional;

(iii) Occupation; and

(iv) Whether the initial reporter also sent a copy of the report to FDA.

(5) *Applicant information.*

(i) Applicant name and contact office address;

(ii) Telephone number;

(iii) Report source(s) (e.g., literature, study);

(iv) Date received by applicant;

(v) Application number and type;

(vi) Type of report being submitted (e.g., 15-day, periodic, followup);

(vii) Adverse drug experience term(s); and

(viii) Manufacturer report number.

(g) *Electronic format for submissions.* (1) *Safety report submissions, including ICSRs.* Any attached documentation, and the descriptive information in periodic reports, must be in an electronic format that FDA can process, review, and archive. FDA will periodically issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation and organization of files).

(2) *Waivers.* An applicant or nonapplicant may request, in writing, a temporary waiver of the requirements in paragraph (g)(1) of this section. These waivers will be granted on a limited basis for good cause shown. If the agency grants the waiver, the applicant or nonapplicant must submit reports required under this section on paper within the required time periods in a form that FDA can process, review, and archive. FDA will issue guidance on how to provide the paper submission. Procedures for how to request waivers of this requirement will be set forth in guidance.

* * * * *

(i) *Patient privacy.* An applicant should not include in reports under this section the names and addresses of individual patients; instead, the applicant should assign a unique code to each report. The preferred methodology for determining the identification code will be set forth in guidance. The applicant should include the name of the reporter from whom the information was received, unless the reporter is the patient. The names of patients, health care professionals, hospitals, and geographical identifiers in adverse drug experience reports are not releasable to the public under FDA's public information regulations in part 20 of this chapter.

* * * * *

5. Section 314.98 is revised to read as follows:

§ 314.98 Postmarketing reports.

(a) Each applicant having an approved abbreviated new drug application under § 314.94 that is effective must comply with the requirements of § 314.80 regarding the reporting and recordkeeping of adverse drug experiences.

(b) Each applicant must make the reports required under § 314.81 and section 505(k) of the act for each of its approved abbreviated applications.

PART 600—BIOLOGICAL PRODUCTS: GENERAL

6. The authority citation for 21 CFR part 600 continues in part to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374; 42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25.

* * * * *

7. Section 600.80 is amended:

a. By removing the word ''shall'' each time it appears and by adding in its place the word ''must'';

b. By removing the phrase ''licensed manufacturer'' each time it appears and by adding in its place the word ''applicant'';

c. In paragraph (a) by alphabetically adding the definition for ''Individual case safety report (ICSR)'';

d. In paragraph (c)(1)(i) by removing the phrase ''in no case later than 15 calendar days of'' and by adding in its place the phrase ''no later than 15 calendar days from'';

e. In paragraph (c)(1)(ii) by removing the last sentence;

f. By removing paragraph (c)(1)(iv);

g. By revising paragraph (c) introductory text, the first and third sentences of paragraph (c)(1)(iii) introductory text, and paragraph (c)(2)(ii);

h. By removing paragraph (d)(2) and by redesignating paragraph (d)(1) as paragraph (d) and revising the first sentence of paragraph (d);

i. By removing paragraph (e)(2) and by redesignating paragraph (e)(1) as paragraph (e);

j. By revising paragraph (f);

k. By redesignating paragraph (g) through paragraph (l) as paragraph (h) through paragraph (m) and by revising newly redesignated paragraph (i); and

l. By adding new paragraph (g) to read as follows:

§ 600.80 Postmarketing reporting of adverse experiences.

(a) * * *

Individual case safety report (ICSR). A description of an adverse experience related to an individual patient or subject.

* * * * *

(c) *Reporting requirements.* The applicant must submit to FDA postmarketing 15-day Alert reports and periodic safety reports pertaining to its biological product as described in this section. These reports must be submitted to the agency in electronic format as described in paragraph (g)(1) of this section, except as provided in paragraph (g)(2) of this section.

(1) * * *

(iii) *Submission of reports.* The requirements of paragraphs (c)(1)(i) and (c)(1)(ii) of this section, concerning the submission of postmarketing 15-day Alert reports, also apply to any person whose name appears on the label of a licensed biological product as a manufacturer, packer, distributor, shared manufacturer, joint manufacturer, or any other participant involved in divided manufacturing. * * * If a person elects to submit adverse experience reports to the applicant rather than to FDA, the person must submit, by any appropriate means, each report to the applicant within 5 calendar days of initial receipt of the information by the person, and the applicant must then comply with the requirements of this section. * * *

* * * * *

(2) * * *

(ii) Each periodic report is required to contain:

(A) *Descriptive information.* (*1*) A narrative summary and analysis of the information in the report;

(*2*) An analysis of the 15-day Alert reports submitted during the reporting interval (all 15-day Alert reports being appropriately referenced by the applicant's patient identification code, adverse reaction term(s), and date of submission to FDA);

(*3*) A history of actions taken since the last report because of adverse experiences (for example, labeling changes or studies initiated);

(*4*) An index consisting of a line listing of the applicant's patient identification code, and adverse reaction term(s) for all ICSRs submitted under paragraph (c)(2)(ii)(B) of this section; and

(B) *ICSRs for serious, expected and nonserious adverse experiences.* An ICSR for each adverse experience not reported under paragraph (c)(1)(i) of this section (all serious, expected and nonserious adverse experiences). All such ICSRs must be submitted to FDA (either individually or in one or more batches) within the timeframe specified in paragraph (c)(2)(i) of this section. ICSRs must only be submitted to FDA once.

* * * * *

(d) *Scientific literature.* A 15-day Alert report based on information in the scientific literature must be accompanied by a copy of the published article. * * *

* * * * *

(f) *Information to be reported on ICSRs.* ICSRs include the following information:

(1) *Patient information.*

(i) Patient identification code;

(ii) Patient age at the time of adverse experience, or date of birth;

(iii) Patient gender; and
(iv) Patient weight.
(2) *Adverse experience.*
(i) Outcome attributed to adverse experience;
(ii) Date of adverse experience;
(iii) Date of report;
(iv) Description of adverse experience;
(v) Description of relevant tests, including dates and laboratory data; and
(vi) Other relevant patient history, including preexisting medical conditions.
(3) *Suspect medical product(s).*
(i) Name;
(ii) Dose, frequency, and route used;
(iii) Therapy dates;
(iv) Diagnosis for use (indication);
(v) State whether adverse experience abated after product use stopped or dose reduced;
(vi) Lot number;
(vii) Expiration date;
(viii) State whether adverse experience reappeared after reintroduction of the product;
(ix) NDC number, or other unique identifier; and
(x) Concomitant medical products and therapy dates.
(4) *Initial reporter information.*
(i) Name, address, and phone number;
(ii) Whether the initial reporter is a health professional;
(iii) Occupation; and
(iv) Whether the initial reporter also sent a copy of the report to FDA.
(5) *Applicant information.*
(i) Applicant name and contact office address;
(ii) Telephone number;
(iii) Report source(s) (e.g., literature, study);
(iv) Date received by applicant;
(v) Application number and type;
(vi) Type of report being submitted (e.g., 15-day, periodic, followup);
(vii) Adverse experience term(s); and
(viii) Manufacturer report number.
(g) *Electronic format for submissions.* (1) Safety report submissions, including ICSRs and any attached documentation and the descriptive information in periodic reports, must be in an electronic format that FDA can process, review, and archive. FDA will periodically issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation and organization of files).

(2) *Waivers.* Persons subject to the requirements of paragraph (c) of this section may request, in writing, a temporary waiver of the requirements in paragraph (g)(1) of this section. These waivers will be granted on a limited basis for good cause shown. If the agency grants the waiver, the person must submit reports required under this section on paper within the required time periods in a form that FDA can process, review, and archive. FDA will issue guidance on how to provide the paper submission. Requests for waivers must be submitted in accordance with § 600.90.

* * * * *

(i) *Patient privacy.* For nonvaccine biological products, an applicant should not include in reports under this section the names and addresses of individual patients; instead, the applicant should assign a unique code to each report. The preferred methodology for determining the identification code will be set forth in guidance. The applicant should include the name of the reporter from whom the information was received, unless the reporter is the patient. The names of patients, health care professionals, hospitals, and geographical identifiers in adverse experience reports are not releasable to the public under FDA's public information regulations in part 20 of this chapter. For vaccine adverse experience reports, these data will become part of the CDC Privacy Act System 09–20–0136, ''Epidemiologic Studies and Surveillance of Disease Problems.'' Information identifying the person who received the vaccine or that person's legal representative will not be made available to the public, but may be available to the vaccinee or legal representative.

* * * * *

8. Section § 600.81 is amended:

a. By removing the phrase ''licensed manufacturer'' each time it appears and by adding in its place the word ''applicant'';

b. By designating the existing text as paragraph (a) and by adding a new heading for paragraph (a); and

c. By adding new paragraph (b) to read as follows:

§ 600.81 Distribution reports.

(a) Reporting requirements. * * *

(b)(1) *Electronic format.* Except as provided for in paragraph (b)(2) of this section, the distribution reports required under paragraph (a) of this section must be submitted to the agency in electronic format in a form that FDA can process, review, and archive. FDA will periodically issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation and organization of files).

(2) *Waivers.* An applicant may request, in writing, a temporary waiver of the requirements in paragraph (b)(1) of this section. These waivers will be granted on a limited basis for good cause shown. If the agency grants the waiver, the applicant must submit reports required under this section on paper within the required time period in a form that FDA can process, review, and archive. FDA will issue guidance on how to provide the paper submission. Requests for waivers must be submitted in accordance with § 600.90.

§ 600.90 [Amended]

9. Section 600.90 is amended by removing the phrase ''licensed manufacturer'' each time it appears and by adding in its place the word ''applicant''.

Dated: August 5, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–19682 Filed 8–20–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 803

[Docket No. FDA–2008–N–0393]

RIN 0910–AF86

Medical Device Reporting: Electronic Submission Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its postmarket medical device reporting regulation to require that manufacturers, importers, and user facilities submit mandatory reports of individual medical device adverse events, also known as medical device reports (MDRs) to the agency in an electronic format that FDA can process, review, and archive. Mandatory electronic reporting would improve the agency's process for collecting and analyzing postmarket medical device adverse event information. The proposed regulatory changes would provide the agency with a more efficient data entry process that would allow for timely access to medical device adverse event information and identification of emerging public health issues. Elsewhere in this issue of the **Federal Register**, FDA is also announcing a draft guidance document that provides recommendations on how to prepare and submit electronic MDRs to FDA in a manner that satisfies the requirements

of this proposed regulation. The proposal also includes modifications to the regulations specifying the content of required MDRs to better track information already solicited on the FDA Form 3500A.

DATES: November 19, 2009. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 (the PRA) by September 21, 2009, (see the ''Paperwork Reduction Act of 1995'' section of this document).

ADDRESSES: You may submit comments, identified by Docket No. FDA–2008–N–0393 and/or RIN number 0910–AF86, by any of the following methods, except that comments on information collection issues under the Paperwork Reduction Act of 1995 must be submitted to the Office of Regulatory Affairs, Office of Management and Budget (OMB) (see the ''Paperwork Reduction Act of 1995'' section of this document).

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Information Collection Provisions: The information collection provisions of this proposed rule have been submitted to OMB for review. Interested persons are requested to fax or e-mail comments regarding the information collection provisions by September 21, 2009, to the Office of Information and Regulatory Affairs, OMB. To ensure that comments on information collection are received, OMB recommends that written comments be faxed to 202–395–7285 or e-mailed to *OIRA_submission@omb.eop.gov*. Please reference this proposed rule and OMB Control Number 0910–0437 and mark your comments to the Attention of the FDA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Howard Press, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Building 66, rm. 3320, Silver Spring, MD 20993–0002, 301–796–6087.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In this proposal, we provide background information on the current status of FDA's medical device reporting requirements, explain the revisions we are proposing here, and describe our approach to electronic medical device reporting.

For over 20 years, FDA has received postmarket MDRs in a paper format. This proposed rule to require the electronic submission to FDA of most MDRs is an important step towards improving the agency's systems for collecting and analyzing postmarket MDRs. The proposed rule includes reports of deaths, serious injuries, and malfunctions that must be reported to FDA in initial 5-day, 10-day, or 30-day individual MDRs or in supplemental reports. We believe this proposed rule would have the following benefits:

- Reduce industry's time and costs associated with transcribing data from internal data management systems to paper and mailing the paper reports to the agency,

• Eliminate the agency's transcription errors, time, and costs associated with receiving paper reports and transcribing data to electronic format for review and analysis,

• Expedite the agency's access to safety information in a format that would support more efficient and comprehensive data analysis and reviews, and

• Enhance the agency's ability to rapidly communicate information about suspected problems to the medical device industry, health care providers, consumers, and other government agencies.

In addition, this proposed rule is consistent with the Government Paperwork Elimination Act (Public Law 105–277) requirement that Federal agencies allow individuals or entities to submit information or transact business with the agency electronically.

A. What Are the Medical Device Reporting Requirements?

The requirements of current medical device reporting regulations are summarized in sections I.A.1 to I.A.3 of this document. In addition, we address changes to these regulations to be effected outside of this proposed rule.

Current MDR regulations (part 803 (21 CFR part 803)) require manufacturers and importers of marketed medical devices, and user facilities, to submit postmarket reports of individual medical device adverse events to FDA on the FDA Form 3500A.

1. What Are the Current Reporting Requirements for Manufacturers and What Is Their Status?

The current MDR regulation requires that manufacturers of medical devices submit a postmarket MDR of an individual adverse event no later than 30 calendar days after becoming aware of information that a device the manufacturer markets may have caused or contributed to a death, serious injury, or malfunction (§ 803.50). This report must be submitted on the FDA Form 3500A, (§ 803.20), and contain information described in § 803.52.

In addition, the regulation requires manufacturers to provide supplemental information about such events, on an FDA Form 3500A, within 30 calendar days of obtaining information should such information become available after the initial MDR was filed with FDA (§ 803.56). In instances where the medical device adverse event resulted in remedial action to prevent an unreasonable risk of substantial harm to the public health, or at the discretion of the agency, the regulation requires the manufacturer to submit an MDR to the agency no later than 5 working days after becoming aware of the information (§ 803.53).

Title II, section 227, of the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Public Law 110–85), amended section 519 of the Federal Food, Drug, and Cosmetic Act (the act) to require that FDA establish criteria for manufacturer reports of malfunctions for most class I and certain class II devices that include requiring those reports to be in summary form and made on a quarterly basis. The types of events required to be reported are unchanged. FDA intends to address changes necessitated by this statutory change separately from this proposed rule, and will address requirements for submission of those new summary malfunction reports at that time. However, some individual malfunction reports will continue to be required even after the FDAAA-related changes, and as explained below, the rule proposed here does address submission of individual malfunction reports to the agency.

2. What Are the Current Reporting Requirements for Importers?

The MDR regulation requires that importers of medical devices submit a postmarket MDR to the agency and the manufacturer no later than 30 calendar days after becoming aware of information that reasonably suggests that one of the importer's marketed devices may have caused or contributed to a death or serious injury (§ 803.40(a)). Importers must submit reports to the manufacturer no later than 30 calendar days after becoming aware of information that reasonably suggests that one of the importer's marketed devices has malfunctioned and that this device or a similar device marketed by the importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur (§ 803.40(b)). These reports must be submitted on the FDA Form 3500A (see § 803.20) and contain the information specified in § 803.42.

3. What Are the Current Reporting Requirements for User Facilities?

The MDR regulation requires that user facilities submit a postmarket MDR of death to the agency and an MDR of death or serious injury to the device manufacturer within 10 working days of becoming aware of information that reasonably suggests that a device has or may have caused or contributed to the death or a serious injury of a patient of the facility. (§ 803.30(a)). The regulation requires that user facilities submit postmarket reports of serious injury to the agency within 10 working days if the manufacturer of the device is unknown or cannot be identified (§ 803.30(a)(2)). These reports must be submitted on the FDA Form 3500A (see § 803.20(a)), and include the information described in § 803.32.

In addition, user facilities are required to submit to the agency an annual summary of the reports they sent to manufacturers and the FDA, using FDA Form 3419 (§ 803.33). The proposal to require submission of reports to FDA in an electronic format does not apply to user facility annual reports made under § 803.33, although other changes to § 803.33 are proposed as explained in section I.B of this document.

B. What Format Is Currently Used for Submitting Postmarket Medical Device Reports?

Current regulations at § 803.20(a) require that user facilities, importers, and manufacturers use the FDA Form 3500A to submit mandatory reports about FDA-regulated devices. This requirement took effect July 31, 1996 (see 60 FR 63578, December 11, 1995; 61 FR 16043, April 11, 1996).

Certain blocks of the FDA Form 3500A are required only for user facilities, while others are required only for manufacturers (see § 803.20(a)(2)).

Subsequent to its initial adoption, FDA revised the Form 3500A and its instructions, adding elements including the premarket approval application (PMA) or 510(k) number for the device, and two questions regarding reprocessed single-use devices. The agency was required to revise the form to include the questions regarding reprocessed single-use devices under section 303 of the Medical Device User Fee and Modernization Act of 2002 (Public Law 107–250). The revised FDA Form 3500A is approved under the PRA, under OMB control number 0910–0291.

FDA Form 3500A has been routinely completed on paper and transmitted to FDA by mail, requiring FDA to manually input information from those reports into its internal electronic systems before it can be reviewed and analyzed. This process is extremely time consuming, costly, and susceptible to data entry errors. Because FDA regulations at § 803.14 provide for the possibility of voluntary electronic submission of MDRs, with agency permission, several regulations in part 803 refer to submission of reports using the FDA Form 3500A ''or an electronic equivalent approved under section 803.14.'' (See, e.g., §§ 803.30, 803.40, and 803.53.) However, reporters have not made use of section 803.14 to

pursue voluntary electronic submission of MDRs, and FDA's legacy systems were not in general designed to accept submission of MDRs in electronic format.

C. Why Is FDA Proposing to Require Electronic Submission of MDRs?

When a medical device has been cleared for marketing and enters the market, the product is introduced to a larger patient population in settings different from clinical trials. New information generated during the postmarketing period offers further insight into the benefits or risks of the product, and evaluation of this information is important for all products to ensure their safe use. Historically, FDA has received almost all postmarket MDRs on paper through the mail. When data elements are provided to FDA on only paper, the information must be entered by hand into an electronic format for review and analysis. This process is extremely time consuming, costly, and susceptible to data entry errors.

The electronic submission of medical device reports would lead to more efficient reviews, enhancing our ability to rapidly disseminate significant information to the medical device industry, health care providers, and consumers, in support of FDA's public health mission.

Electronic submissions would also improve the speed and efficiency of both industry and agency operations. Electronic reporting can benefit industry by reducing the costs associated with collating, copying, storing, retrieving, and mailing paper medical device reports to the agency on FDA Form 3500A. In addition, the agency benefits from the elimination of manual data entry processes and reductions in physical storage for paper copies of the FDA Form 3500A. Based on low rates of participation in prior pilot voluntary electronic MDR submission programs, FDA believes that without a regulation requiring electronic submission of MDRs a large number of medical device firms and user facilities would resist changing their procedures for a long period of time. This delay would hinder our achieving the benefits of standardized formats and quicker access to MDR data.

1. What Are the Options for Electronic Reporting?

FDA's Center for Devices and Radiological Health (CDRH) has established its MDR databases currently to support two options for electronic submission of MDRs: One designed for low volume reporting and one designed for high volume reporting. Both options make use of the FDA Electronic Submission Gateway (FDA ESG), a secure electronic portal described further in this document, for transmission of reports to FDA. In accordance with 21 CFR 11.2(b), CDRH is now accepting on a voluntary basis, in lieu of paper, MDRs prepared and transmitted in accordance with these options. More information on electronic submission of MDRs is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/PostmarketRequirements/ReportingAdverseEvents/ucm127932.htm*.

For low-volume medical device reporting (few or infrequent MDRs), the current approach developed by the agency uses the CDRH eSubmitter (CeSub) software. The CeSub software allows for the submission of one MDR at a time. The software provides the following tools:

- Save address and contact information,
- Search for a Product Code,
- Search to locate a patient or Device Problem Code,
- Search to find manufacturer evaluation codes (method, result, and conclusion),
- Attach documents when additional information needs to be provided,
- Produce a ''missing data report'' to help ensure that all required information is supplied before submission to FDA.

Once the MDR is completed, the file is ''packaged for submission.'' The package generates an electronic version of the FDA Form 3500A, which can be submitted to FDA using the FDA ESG. The final CeSub-generated report can also be saved or printed, for recordkeeping or to provide reports to manufacturers or other entities outside of FDA. The CeSub software and instructions for installation are free and available at: *http://www.fda.gov/ForIndustry/FDAeSubmitter/ucm107903.htm*. We may sometimes update or change our methodology, approach or software to improve the low-volume reporting experience.

Reporters with large volumes of MDRs may prefer the second option, called the Health Level 7 Individual Case Safety Report (HL7 ICSR). The HL7 ICSR was developed in conjunction with the HL7 standards organization to support the exchange of electronic data. This option allows for the extraction directly from the reporter's database of information to populate an MDR, production of the appropriate data output, and transmission of the MDRs to the FDA ESG. The HL7 ICSR supports the batch submission of more than one individual MDR at a time. Reporters developing applications using the HL7 ICSR standard may also build functions for saving or printing those reports.

The draft guidance document announced elsewhere in this **Federal Register** provides information on both options for electronic submission of MDRs.

2. What Is the FDA Electronic Submission Gateway (ESG)?

The FDA ESG is the entry point for all electronic submissions to the agency. The FDA ESG is available 24 hours a day, 7 days a week. Information on the FDA ESG is available at *http://www.fda.gov/ForIndustry/ElectronicSubmissionsGateway/default.htm*. To use the FDA ESG, reporters need to have a digital certificate. A digital certificate is an attachment to an electronic message that allows the recipient to authenticate the identity of the sender via third party verification from an independent certificate authority. Digital certificates are used to identify encryption and decryption codes between message senders and recipients. Information on digital certificates can be found at *http://www.fda.gov/ForIndustry/ElectronicSubmissionsGateway/ucm113223.htm*.

3. How Do I Know FDA Received My Electronic Submission and It Was Successfully Processed?

FDA's electronic submission processing system sends the submitter three different acknowledgments (messages) for each submission. Acknowledgment 1 comes from the ESG and indicates your submission was received. Acknowledgment 2 is sent by the ESG and indicates the submission reached CDRH. CDRH sends Acknowledgment 3 and notifies you whether your submission was successfully loaded into CDRH's adverse event database or the submission contained errors (specified in the acknowledgment) during validation and loading. If your submission contained errors, the errors need to be corrected and the corrected reports resent.

II. Description of the Proposed Rule

A. How Would the Rule Address Submission of Reports in Electronic Format?

This rule would revise § 803.12 to require that manufacturers, importers, and user facilities submit postmarket MDRs to the agency in an electronic format that FDA can process, review, and archive. Under the proposal, FDA will periodically issue information on

file formats, preparation and organization of files, media, method of transmission, and other relevant technological specifications for providing reports in an electronic format that FDA can process, review, and archive. Proposed new § 803.23 would direct reporters to the agency's Web site to find the most updated relevant information. Reports between manufacturers, importers, and user facilities would not be subject to the requirement of submission in electronic format, and may be in any format the recipient can read.

The rule would make conforming changes throughout part 803 to reflect the proposed requirement to submit reports to FDA in electronic format. These changes include removing § 803.11, which currently addresses obtaining paper forms, and removing § 803.14, which currently provides for voluntary electronic submission of reports with FDA consent. The proposal would amend § 803.19, which already addresses exemptions or variances from any of the requirements of part 803, to specifically address exemption or variance from the requirement to submit reports to FDA in electronic format. Other changes include removing references to ''electronic equivalent[s] approved under § 803.14'' from §§ 803.13, 803.30, 803.33, 803.40, and 803.53, and updating wording in § 803.20 and 803.56 to be more consistent with the fact that reports will not be submitted on paper (and thus, for example, would no longer have a front and back).

If this proposed rule becomes final, manufacturers, importers, and user facilities would be required to begin submitting medical device reports to the agency in electronic format no later than 1 year from the date of publication of a final rule. After the effective date, the agency would not accept MDRs submitted on paper copies of the FDA Form 3500A, or in electronic formats other than those identified as ones that FDA can process, review, and archive in information provided in conjunction with this rule, unless the agency had granted an exemption or variance as provided for in § 803.19.

1. How Would the Reporting Requirements for Manufacturers Change With Respect to Electronic Format?

The rule would amend §§ 803.50(a), 803.53, and 803.56 to require submission of information required by §§ 803.52, 803.53, and 803.56 in electronic format in accordance with § 803.12(a).

2. How Would the Reporting Requirements for Importers Change With Respect to Electronic Format?

The proposed rule amends § 803.40(a) to require submission to FDA of information required by § 803.42 in electronic format in accordance with § 803.12(a). The proposed electronic format requirement does not extend to importer reports submitted to device manufacturers, which may be in any format that the recipient can read.

3. How Would the Reporting Requirements for User Facilities Change With Respect to Electronic Format, and How Would Annual Report Requirements be Affected?

The proposed rule amends § 803.30(a) to require submission to FDA of information required by § 803.32 in electronic format in accordance with § 803.12(a). The amendment does not impose mandatory electronic format requirements on user facility reports submitted to device manufacturers, which may be provided in any format the recipient can read.

The proposed rule also makes certain changes to § 803.33, addressing user facility annual reports. Under the proposed rule, user facilities will continue to submit annual reports on the paper FDA Form 3419. Because the proposal to require submission of individual adverse events reports in electronic format calls for amendments to § 803.12 and for removal of §§ 803.11 (indicating how to obtain paper forms) and 803.14 (addressing voluntary electronic submissions), FDA is proposing to amend § 803.33 to specify where to obtain the FDA Form 3419, where to submit completed reports under that section, and to remove references to § 803.14.

4. How Would the Requirement to Submit Reports in Electronic Format Affect Recordkeeping Requirements?

Section 803.18 of the regulation addresses requirements for establishing and maintaining MDR files or records for manufacturers, user facilities, and importers. FDA is proposing to amend § 803.18(b)(ii) to require that MDR files contain copies of all reports submitted under part 803, whether paper or electronic. As under the current regulations, under the proposal, regulated entities may choose to maintain required records either in hard copy, by printing out reports submitted in electronic format, or in electronic form. (For information regarding FDA's current thinking and enforcement policy with regard to requirements for maintaining electronic records, see 21 CFR part 11 and the agency guidance document, ''Guidance for Industry: Part 11, Electronic Records; Electronic Signatures—Scope and Application,'' available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm072322.pdf5667fnl.pdf*.). FDA is also proposing to add § 803.18(b)(1)(iii) to require the retention of all acknowledgments FDA sends the manufacturer, importer, or user facility when reports are submitted in electronic format, which will indicate the timing and success of submission.

B. How Would I Submit MDRs in Electronic Format?

As noted previously, if the proposed rule is finalized, manufacturers, importers, and user facilities will be required to submit most MDRs to the agency in an electronic format that FDA can process, review, and archive. In order to best accommodate technological changes, FDA expects to issue information on how to prepare and submit MDRs to the agency in a way that would satisfy the requirements of this proposed rule. The most specific and updated information about how to create, format, and transmit reports, using the CeSub software (designed for low volume reporting) or the HL7 ICSR (designed for high volume reporting), is provided on the agency's Web site, at the address provided in proposed § 803.23. The agency will make every effort to maintain backwards compatibility when implementing changes to the systems and formats for electronic submission. When backwards compatibility is not possible, the agency will provide public notice with a duration commensurate with the complexity of the change.

C. How Can a Medical Device Manufacturer, Importer, or User Facility Obtain a Variance Regarding the Requirement to Submit a Report in Electronic Format?

Under proposed § 803.19, a manufacturer, importer, or user facility may submit a written request to FDA seeking a variance of the § 803.12 requirement to submit reports to the agency in an electronic format that the agency can process, review, and archive. Written requests must contain the reason(s) why the reporting entity requires a variance and for how long the variance is needed. FDA anticipates receiving few variance requests because of the availability of the Internet and the commercial availability of digital certificates as well as FDA's free CeSub Internet software. Under the proposal, if FDA grants a variance, the

manufacturer, importer, or user facility would be required to submit MDRs as specified by FDA in the letter authorizing the variance.

D. What Other Changes Are Being Proposed?

The proposed rule would also codify the following modifications:

1. FDA proposes to remove the definition of ''Five-day report'' in § 803.3, which merely referred to a report submitted under § 803.53 (the only provision of the regulation in which the term appears), using the FDA Form 3500A or ''an electronic equivalent approved under § 803.14.'' Because this definition is not necessary, FDA proposes to remove it.

2. FDA proposes to amend §§ 803.32, 803.42, and 803.52 to make minor wording changes and corrections to these sections to reflect modifications already made to FDA Form 3500A and its instructions, with OMB approval under the PRA. For example, section 303 of the Medical Device User Fee and Modernization Act of 2002 (Public Law 107–250) required FDA to modify the forms to facilitate reporting of MDRs involving single-use devices that have been reprocessed for reuse (see 69 FR 7491, February 17, 2004). FDA is proposing to amend §§ 803.32, 803.42, and 803.52 to reflect the addition to the FDA Form 3500A of these two questions concerning whether the device is a single use device that has been reprocessed and reused on a patient and the name and address of the reprocessor.

FDA is also proposing to change §§ 803.32(b)(4), 803.42(b)(4), and 803.52(b)(4) from ''date of report by the initial reporter'' to ''date of this report.'' This change would make part 803 consistent with the way that other FDA Centers interpret FDA Form 3500A, Block B4 and how Block B4 appears on FDA Form 3500A. Finally, FDA is also proposing to make other minor updates to §§ 803.32(c), 803.42(c), and 803.52(c) and (e) to reflect the changes already made to the forms and instructions, including a reference to the product code and PMA/510(k) number.

E. When Would the Rule Become Effective?

FDA proposes that any final rule that issues based on this proposal become effective 1 year after the date the final rule publishes in the **Federal Register**.

III. What Is the Legal Authority for This Rule?

FDA's legal authority to amend its regulations governing the submission of postmarket medical device adverse event reports for medical devices derives from 21 U.S.C. 352, 360, 360i, 360j, 371, and 374.

IV. Is There an Environmental Impact?

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). This proposed rule has been determined to be a significant regulatory action.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because we lack information on the electronic submission capabilities of all the firms potentially affected by this proposed rule we have not proposed to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. We request commenters to submit such information in their comments.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $133 million, using the most current (2008) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that will meet or exceed this amount.

The purpose of this proposed rule is to require the submission of MDRs in an electronic format the agency can process, review, and archive. It would affect all persons subject to medical device reporting under part 803, which includes medical device manufacturers, device importers, and user facilities.

The proposed rule is part of a greater agency initiative to adopt electronic technologies to improve the quality of our operations and increase the efficiency of our resources. The rule would reduce FDA's current costs associated with processing medical device reports (or MDRs) that are received on the paper FDA Form 3500A. By receiving MDRs electronically, FDA would be able to access the adverse event information more quickly and also eliminate potential data entry errors that could occur during input transcription of the information from the paper FDA Form 3500A reports into our electronic medical device adverse event reporting database.

After considering various alternatives, FDA determined that without this regulation, the agency will need to maintain adequate resources to continue to convert paper 3500A MDRs to electronic MDR records until all manufacturers, importers, and user facilities voluntarily adopted the proposed electronic submission format, possibly years in the future.

A. Benefits

The major benefit of this proposed rule would be to public health because the agency would have quicker access to the medical device adverse event reports information and thus could more quickly identify and act on any medical device problems. Currently, FDA receives 100,000 initial MDRs annually on the paper FDA Form 3500A, which are manually entered into the FDA database. FDA receives an additional 110,000 supplemental reports each year that are also submitted on the paper FDA Form 3500A and need to be processed and entered into the FDA database. It can take from 3 days to more than 6 months before an MDR submitted on a paper copy of the FDA Form 3500A may be available for analysis in the Manufacturer and User Device Experience database (MAUDE). With a standardized electronic format, medical device reports would become available for analysis as soon as they are processed into MAUDE. With a reduction in the time to manually enter the MDRs into the MAUDE database, analysis and action, including feedback to manufacturers and consumers, could be taken sooner with a corresponding benefit to public health.

The public health benefits would be supplemented with operating cost reductions within FDA. Assuming the number of MDRs remains fairly constant over time, electronic reporting would

save the agency about $1.25 million annually in data entry costs, which is about one-half of our current data entry contract.

B. Costs

There are about 18,000 medical device manufacturers and importers identified in FDA's medical device registration database and approximately 38,500 user facilities identified in the 2002 U.S. Economic Census that would be affected by the proposed rule (for a total of 56,500 manufacturers, importers, and user facilities) (Census, 2002). Table 1 shows the estimated numbers of firms and establishments in the affected industries.

TABLE 1.—AFFECTED FIRMS AND ESTABLISHMENTS

North American Industry Classification System (NAICS) Code	Description	No. of Firms	No. of Establishments
Various	Devices	18,000	8,000
622	Hospitals	3,800	6,342
6231	Nursing care facilities	7,826	15,480
6214	Outpatient care centers	11,125	23,912
6215	Medical and diagnostic laboratories	5,736	9,844
6216	Home health care services	9,987	15,016
Total		56,474	88,594

The incremental cost of changing to electronic submissions for each affected entity would vary by the size, type, and corporate structure of the firm, as well as by its current electronic submission capability. The total costs associated with this proposed rule would include one-time set-up costs and annual operating costs.

1. One-Time Costs

One-time costs would be the sum of the costs of:

- Rewriting standard operating procedures (SOPs) and training the appropriate personnel,
- Installing and validating either the installation of CDRH's CeSub Web interface software or the programming and configuration of a computer system to transmit reports directly to the FDA ESG using the HL7 ICSR, and
- Acquiring the electronic digital certificate required by the FDA ESG.

a. *Rewriting SOPs and training personnel.* All entities affected would need to update their SOPs to include the electronic submission requirement. For medical device manufacturers, importers, and hospitals, we estimate that it would require about 10 hours to make the modifications and train the appropriate people on the new procedures. For the other user facilities, we assume that the corporate or regional offices would have the major responsibility for medical device reporting and thus the SOPs for these individual entities would require less time to modify. For this analysis we estimated that 55 percent of the other user facilities would require about 10 hours to modify their SOPs and the remaining 45 percent would require about 2 hours.[1] The estimated one-time incremental cost for updating SOPs, assuming an average wage rate of $52 per hour,[2] (Bureau of Labor Statistics (BLS), 2006) is about $34.1 million [((18,000 medical device manufacturers and importers + 6,300 hospitals) x 10 hours) + ((0.45 x 2 hours + 0.55 x 10 hours) x 64,500 other user facilities) x $52/hour].

b. *Setting up systems for submission.* MDRs would be submitted through the FDA ESG using one of two methods: The CDRH CeSub software or the HL7 ICSR. Because most entities are small and submit few if any MDRs annually, we assume they would probably use the CDRH CeSub software, which allows for the submission of one MDR at a time. To comply using this submission method, manufacturers, importers, and user facilities would need high-speed Internet connections and would have to download and install up to three free software programs, validate the installation, and train the appropriate personnel on the new procedures. Entities that have dedicated information technology (IT) staff would be able to install and validate the installation themselves. Smaller manufacturers, importers, and user entities would probably choose to hire an outside contractor for the installation and its validation.

We do not have data on the amount of time required to install and validate the installation of the software or the percentage of entities that might need to contract out the installation. For this analysis, we assumed it would take an entity 8 to 16 hours to install and validate the installation of CDRH's CeSub software and install, if necessary, Java Runtime Edition software and Java security policy files for their Internet browser. This estimate also includes the time required to notify FDA, run a test submission through the FDA ESG, and to train the appropriate staff to use the new program. We are also assuming that almost all medical device manufacturers, importers, and all user facilities would use this method to submit MDRs. Using an average wage of $46.50 for computer and mathematical occupations[3] (BLS 2006), we estimate the cost to install and use the software to be between $21.0 million and $41.7 million [(8 hours x $46.50 wage) x (38,500 user facilities + 18,000 manufacturers and importers) to (16 hours x $46.50 wage) x (38,500 user facilities + 18,000 manufacturers and importers)].

Entities that submit a large number of MDRs each year may choose to use the HL7 ICSR method to submit the reports.

[1] Percentages are based on the ratio of firms to establishments from 2002 Census of Manufactures data.

[2] $52 per hour wage is based on BLS Occupational Employment and Wages, May 2006, for Medical and Health Service Managers, Standard Occupational Classification 11–19111. Forty percent was added to the mean hourly wage of $37.09 to account for benefits and the total was rounded to the nearest whole number.

[3] BLS Occupation Employment and Wages, May 2006, by occupation, for all industries (*http://www.bls.gov*). Wage ($46.50) includes mean hourly wage of $33.22 for Standard Occupational Classification 15–0000, computer and mathematics occupations, all industries; we add 40 percent to account for benefits.

This method allows for the batch submission of multiple MDRs at faster transmission rates. We do not know at what threshold of reporting it becomes cost effective for an entity to submit medical device reports using this method. An analysis of FDA submission data for a 6-year period indicated that about 20 large medical device manufacturers submit 500 or more MDRs each year and about 85 submit close to 100 medical device reports per year. We assumed that the actual number of entities using the HL7 ICSR would fall somewhere within this range (20 to 85). We also assumed that only entities that have existing infrastructure to support HL7 ICSR transmissions would choose this method to submit MDRs. We estimated that it would take about 50 hours to set up their gateway to be compatible with the agency's system. Using the wage $46.50, the one-time cost for establishing HL7 ICSR submission capabilities would range between $50 thousand and $200 thousand [($46.50 x 50 hours) x 20 entities) and ($46.50 x 50 hours) x 85 entities)].

c. *Electronic certificates.* All entities would need an electronic certificate to submit any electronic regulatory document to the FDA ESG. The electronic certificate identifies the sender and serves as an electronic signature. Entities that have not submitted any electronic documents to the agency would incur a one-time cost to acquire the certificate and recurring costs to keep the certificate active as a result of this proposed rule. The certificates cost about $20 and are valid for 1 year. We assume that the search and transactions costs involved in the initial acquisition of the certificate doubles the cost of the certificate to a total of $40 for the first year, half of which would be setup costs. If all entities needed to acquire electronic certificates, the one-time search and acquisition costs would be $1.1 million ($20 acquisition cost x 56,500 entities).

In addition to the costs we have estimated, manufacturers, importers, and user facilities affected by this proposed rule may have to hire outside expertise to install and validate the software installation to comply with the proposed requirements.

Table 2 summarizes the estimated one-time costs by type of cost for this proposed rule by cost and type of manufacturers, importers, and user entities. The estimate of the total one-time costs for all manufacturers, importers, and user facilities ranges from $58.6 million to $79.7 million. Much of the cost involves acquiring the electronic certificate for the capability to submit any regulatory document to the FDA, including installation and validation of the CeSub software or to establish HL7 ICSR capabilities. Therefore, manufacturers, importers, and user facilities that are not already making electronic submissions of any kind to the agency if this proposed rule becomes final would incur these total costs.

TABLE 2.—SUMMARY OF ONE-TIME COSTS BY INDUSTRY ($ MILLION)

Industry	Modifying SOPs	Install and validate CeSub software		Gateway to gateway		Acquiring e-certificate	Total	
		low	high	low	high		low	high
Medical Device	9.4	6.7	13.4	0.05	0.2	0.4	16.6	23.4
User Facility	26.9	14.3	28.6			0.8	42.0	56.3
Total	36.3	21.0	42.0	0.05	0.2	1.2	58.6	79.7
Annualized at 3 percent over 10 years							6.9	9.3
Annualized at 7 percent over 10 years							8.3	11.4

2. Annual Costs

The annual costs of this proposed rule would include the costs of:

- Maintaining certificates and
- High-speed Internet access.

a. *Maintaining electronic certificates.* Manufacturers, importers, and user facilities would bear the cost to maintain the electronic certificate that identifies the sender. In addition to having to renew the certificate on a regular basis, those entities who have not submitted MDRs would also have to ensure they are capable of transmitting electronic MDRs to FDA should such a report submission be necessary. To add these costs to the cost of the certificate itself, we assume that entities would incur an additional annually recurring cost equal to one-half the price of the certificate ($10), for a total annually recurring cost of $30. If all manufacturers, importers, and user facilities need to acquire electronic certificates, the annual cost would be $1.7 million ($30 acquisition certificate renewal and acquisition cost x 56,500 entities).

b. *High-speed Internet access.* Entities would also need high-speed Internet access to use either of the submission methods. A 2004 study of small businesses sponsored by the Small Business Administration (SBA) found that essentially all small firms had Internet access and about 50 percent had high-speed Internet access (Pociask, 2004). The average cost of high speed access was about $40 per month more than dial-up access. Because the average cost of Internet access has been going down over time, we estimate that by the time this proposed rule would be made final, about 75 percent of device and user facilities would have high speed access. The average annual recurring increase in cost for high speed Internet access for the remaining 25 percent of the entities would be $6.8 million (($40 x 12 months) x (0.25 x (18,000 manufacturers and importers + 38,500 user facilities))).

Table 3 shows the annual costs of the proposed rule. As with the one-time costs, only entities not making electronic regulatory document submissions of any kind to the agency if this proposed rule becomes final would incur all these costs. There would be no change in the actual time required to research and prepare the MDRs, nor would there be any additional reporting requirements as a result of this proposed rule. Manufacturers, importers, and user facilities that maintain paper FDA Form 3500A records for their internal MDR files own use could still do so under the proposed rule.

TABLE 3.—SUMMARY OF ANNUAL COSTS BY INDUSTRY ($ MILLION)

Industry	Acquiring electronic certificate	High-speed Internet access	Total
Medical Device	0.5	2.2	
User Facility	1.2	4.6	
Total	1.7	6.8	8.5

Cost savings: We estimate a modest industry savings of about $3.2 million annually because electronic submission should reduce the time it takes to submit documents. It should be noted that the savings accumulate to firms submitting MDRs; firms that submit very few or no MDRs would not realize any savings.

C. Summary of Benefits and Costs

The principal benefit of this proposed rule would be the public health benefits associated with more rapid processing and analysis of the 100,000 initial individual MDRs currently submitted to FDA on a paper FDA Form 3500A. In addition, requiring electronic submission of MDRs is expected to reduce FDA annual operating costs by $1.25 million and generate industry savings of about $3.2 million.

The total one-time cost for modifying SOPs and establishing electronic submission capabilities is estimated to range from $58.6 million to $79.7 million. Annually recurring costs totaled $8.5 million and include maintenance of electronic submission capabilities, including renewing the electronic certificate, and for some entities the incremental cost to maintain high-speed Internet access. The total annualized cost of the proposed rule, assuming a 7-percent discount rate over 10 years, would be from $16.8 million to $19.9 million ($15.4 million to $17.8 million at a 3-percent discount rate). We request comment on the accuracy and completeness of the assumptions used to estimate the costs of this proposed rule. For example, we invite comment on our use of a 10-year time horizon and whether a shorter or a longer horizon would be more appropriate to express the social costs of this proposed rule.

D. Alternatives Considered

During the development of this proposed rule, we considered a number of alternative approaches. The first was to allow manufacturers, importers, and user facilities to voluntarily submit MDRs electronically. Because our experience has shown that a number of medical device firms and user facilities would resist changing their procedures for a long period of time, we would not attain the benefits of standardized formats and quicker access to medical device adverse event data. The FDA, for example, would have to maintain contracts to handle the input of information from both written and electronic MDRs. A voluntary system, therefore, would fail to achieve the goals of this proposed rule.

Another alternative was to allow small entities more time to comply with the electronic submission requirements. This alternative would allow small entities to delay compliance. Under this alternative, we would not receive the full data-entry savings from requiring electronic submissions or all the benefits of quicker access to these reports. Because so many device companies are small entities, this approach would significantly postpone the benefits the rule is intended to confer. Moreover, as shown in the following section, the estimated incremental costs per small entity from the proposed rule are small, so the cost reduction per small entity from delayed compliance would also be small.

E. Regulatory Flexibility Analysis

The SBA defines a small medical device manufacturer as having fewer than 500 employees. Based on data from U.S. Census, about 98 percent of device firms affected by this proposed rule are considered small entities, and have an average value of shipments of about $9.0 million.[4] Businesses in the health care industry are classified as small if their revenues are below a certain level. Hospitals are small if their total revenue falls below $25 million and the other user facilities are considered small if their revenues are below $10 million. U.S. Census data indicates that about 87 percent of the user facilities are classified as small and have a weighted average revenue of about $3.3 million.[5] However, very few user facilities submit MDRs in any given year. While this proposed rule will now require those reports submitted to the agency to be in electronic format, the content of a report is not being changed from that already addressed on the current FDA Form 3500A. The average costs for these manufacturers, importers, and user facilities are listed in table 4. The average total annualized cost per small entity, assuming a 7-percent discount rate over 10 years, would range from $581 to $693; at a 3-percent discount rate, average annualized costs would range from $568 to $661. These costs represent less than 0.1 percent of revenues for medical device firms and less than 0.1 percent of revenues for user facilities.

We considered two possible alternatives for regulatory relief for small businesses. As described above, one regulatory alternative would be longer compliance times for small entities. We would not receive the full data-entry savings from requiring electronic submissions or all the benefits of quicker access to these reports. Because so many device companies are small entities, this approach would significantly postpone the benefits the rule is intended to confer. Moreover, as shown above, the estimated incremental costs per small entity from the proposed rule are small, so the cost reduction per small entity from delayed compliance would also be small.

In addition, we considered proposing a waiver to the electronic submission requirement for small firms that can demonstrate an economic hardship. Because the estimated incremental costs per small entity from the proposed rule are small, the cost reduction per small entity from a waiver would also be small.

We ask for comments on both of these options for regulatory relief for small entities.

While the estimated costs per affected entity are low, FDA does not have adequate information on the electronic capabilities of all of the firms affected

[4] U.S. Census Bureau, 2002 Economic Census, Manufacturing Industry Series, Industry Statistics by Employment Size for NAICS codes: 334510, 339112, 339113, 339114, and 339115 (*www.census.gov*).

[5] U.S. Census Bureau, 2002 Economic Census, Release Date 11/22/2005, Sector 62: Health Care and Social Assistance: Subject Series—Establishment and Firm Size: Receipts/Revenue Size the United States for NAICS 622, 6231, 6214, 6215, and 6216 accessed via American Fact Finder (*www.census.gov*).

by this proposed rule and has made many assumptions to derive these estimate used in this analysis, therefore we do not propose to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. FDA requests comment on this issue.

TABLE 4.—INCREMENTAL COMPLIANCE COSTS PER SMALL ENTITY

	One-Time Costs		Annually Recurring	Total Annualized	
	low	high		low	high
Rewriting SOPs	104	520			
Software Installation and validation of installation	372	744			
Acquiring Electronic Certificate	40				
Maintaining submission capabilities			30		
Upgrade Internet Access			480		
7 percent discount rate				581	693
3 percent discount rate				568	661

VI. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the PRA (44 U.S.C. 3501–3520). A description of these provisions is given in this document with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Medical Device Reporting

Description: In accordance with the proposed Medical Device Reporting regulation, medical device manufacturers, importers, and user facilities would be required to submit MDRs to FDA, to maintain records, and may also seek exemption or variance from these requirements. FDA is also proposing to amend §§ 803.32, 803.42, and 803.52 to make minor wording changes and corrections to these sections to reflect modifications already made to FDA Form 3500A and its instructions. Manufacturers, importer, and user facilities are currently submitting paper MDR reports on FDA Form 3500A. The existing information collection for part 803 is approved under OMB control number 0910–0437. The changes to the burden associated with this proposed rule are described below and have been sent to OMB as a revision to OMB control number 0910–0437 for review under section 307(d) of the PRA.

Section 519(a)(1) of the act (21 U.S.C. 360i(a)(1)) requires every manufacturer or importer to report ''whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed devices—

(A) may have caused or contributed to a death or serious injury, or

(B) has malfunctioned and that such device or a similar device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur * * *''

Section 519(b)(1)(A) of the act requires ''whenever a device user facility receives or otherwise becomes aware of information that reasonably suggests that a device has or may have caused or contributed to the death of a patient of the facility, the facility shall, as soon as practicable but not later than 10 working days after becoming aware of the information, report the information to the Secretary and, if the identity of the manufacturer is known, to the manufacturer of the device.''

Section 519(b)(1)(B) of the act requires ''whenever a device user facility receives or otherwise becomes aware of: (i) information that reasonably suggests that a device has or may have caused or contributed to the serious illness of, or serious injury to, a patient of the facility * * *, shall, as soon as practicable but not later than 10 working days after becoming aware of the information, report the information to the manufacturer of the device or to the Secretary if the identity of the manufacturer is not known.''

Complete, accurate, and timely adverse event information is necessary for the identification of emerging device problems so the agency can protect the public health under section 519 of the act. FDA is requesting approval for the information collection requirements contained in part 803.

Description of Respondents: Manufacturers and importers of medical devices and device user facilities. Device user facility means a hospital, ambulatory surgical facility, nursing home, outpatient diagnostic facility, or outpatient treatment facility as defined in § 803.3, which is not a physician's office (also defined in § 803.3).

The total annual estimated burden imposed by this collection of information is 21,525 hours annually.

TABLE 5.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	FDA Form No.	No. of Respondents	Annual Frequency Per Response	Total Annual Responses	Hours per Response	Total Hours
803.19		55	4	220	1	220
803.30 and 809.32		411	2	822	0.33	271
803.33	3419	411	1	411	1	411
803.40 and 803.42		44	20	880	0.33	290
803.50 and 803.52		1,304	58	75,632	0.11	8,248
803.56		1,200	48	57,600	0.10	5,760
Total						15,200

TABLE 6.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Respondents	Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
803.17	1,677	1	1,677	3.3	5,534
803.18 (a) to (d)	527	1	527	1.5	791
Total	2,204		2,204		6,325

The approved MDR reporting and recordkeeping burden for paper submissions is 138,271 hours. This proposed rule reporting and recordkeeping burden for electronic submissions is 21,525 hours, a decrease of 123,071 hours. Based on an average wage rate of $46.50 per hour, the total cost to respondents associated with these reporting and recordkeeping burdens is $1,000,913. An explanation for the burden decrease is provided below.

A. Reporting Requirements

The number of respondents for each Code of Federal Regulations (CFR) section in table 5 is based upon the number of respondents entered into FDA's internal databases. FDA estimates that electronic submission will decrease the burden associated with §§ 803.19, 803.30, 803.32, 803.40, 803.50, 803.52, and 803.56. We believe electronic submission will neither increase nor decrease burden associated with § 803.33, which we estimate will take 1 hour. We believe § 803.19 will take 1 hour, while §§ 803.30, 803.32, 803.40, and 803.42 will take 20 minutes. Sections 803.50 and 803.52 will take 7 minutes. Section 803.56 will take 6 minutes. The following table summarizes our burden estimates and how we believe they will change due to electronic submission.

TABLE 7.—ESTIMATED REPORTING BURDEN PROGRAM CHANGE

21 CFR Section	Hours per response under current paper submission process	Hours per response as result of electronic submission	Burden Change
803.19	3	1	Reduction (2 hours)
803.30 and 809.32	1	0.33	Reduction (.66 hours)
803.33	1	1	no change
803.40 and 803.42	1	0.33	Reduction (.66 hours)
803.50 and 803.52	1	0.11	Reduction (.89 hours)
803.56	1	0.10	Reduction (.90 hours)

As previously described, there are two reporting options. The first one is CeSub for low volume reporters and the second one is HL7 ICSR for high volume reporters. We are basing our hours per response for both systems on FDA's experience using the two options.

B. Recordkeeping Requirements

The number of respondents for each CFR section in table 6 is based upon the number of respondents entered into FDA's internal databases. The agency believes that the majority of manufacturers, user facilities, and importers have already established written procedures to document complaints and information to meet the MDR requirements as part of their internal quality control system. The following table summarizes our burden estimates and how we believe they will change due to electronic submission.

TABLE 8.—ESTIMATED RECORDKEEPING BURDEN PROGRAM CHANGE

21 CFR Section	Hours per response under current paper submission process	Hours per response as result of electronic submission	Burden Change
803.17	10	3.3	Reduction (7.7 hours)
803.18 (a) to (d)	1.5	1.5	No change

C. Total Annual Cost Burden

As stated earlier, the cost to respondents for these reporting and recordkeeping requirements is $1,000,913. In addition, the conversion from paper to electronic submissions will result in capital costs, both one-time costs as well as annual costs, as discussed earlier in this proposed rule in the economic analysis. One-time capital costs include the cost to modify reporting systems, installing and validating CeSub software, installing gateway to gateway submission capabilities, and acquiring e-certificates and have been estimated to range from a low of $58.6 million to a high of $79.7 million. Once the procedures have been modified, there is an operating and maintenance cost to renew the digital certificate and maintain high-speed internet access, which have been estimated cost $8.5 million each year. Burden estimates are based on reports processed between July 1, 2005, and June 30, 2006, with the existing medical device adverse event reporting program.

In compliance with the PRA, the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection to OMB (see the **DATES** and **ADDRESSES** sections of this document).

VII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that this rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

VIII. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. U.S. Census Bureau, 2002 Economic Census Industry Series: NAICS Code 62, Health Care and Social Assistance (*http://www.census.gov*). Total is the sum of firms in NAICS 622, 6231, 6214, 6215, and 6216.

2. BLS Occupational Employment and Wages May 2005 for Medical and Health Service Managers, Standard Occupational Classification, 11–19111.

3. Pociask, Steven, A Survey of Small Businesses' Telecommunications Use and Spending, SBA Office of Advocacy contract number SBA–HQ–02–M–0493, March 2004.

List of Subjects in 21 CFR Part 803

Imports, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA proposes to amend part 803 to read as follows:

PART 803—MEDICAL DEVICE REPORTING

1. The authority citation for 21 CFR part 803 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

§ 803.3 [Amended]

2. Amend § 803.3 by removing the definition for ''Five-day report''.

§ 803.11 [Removed]

3. Remove § 803.11.

4. Revise § 803.12 to read as follows:

§ 803.12 How do I submit reports and supplements?

(a) Manufacturers, user facilities, and importers must submit initial and supplemental reports to FDA in an electronic format that FDA can process, review, and archive. FDA will provide and update information on how to provide the electronic submission (e.g., preparation and organization of files, file formats, media and method of transmission).

(b) If you are confronted with a public health emergency, this can be brought to FDA's attention by contacting the FDA Office of Emergency Operations (HFA–615), Office of Crisis Management, Office of the Commissioner, at 301–443–1240, followed by the submission of an e-mail to *emergency.operations@fda.hhs.gov*. Note: This action does not satisfy your obligation to report under part 803.

(c) You may submit a voluntary telephone report to the MEDWATCH office at 800–FDA–1088. You may also obtain information regarding voluntary reporting from the MEDWATCH office at 800–FDA–1088. You may also find the voluntary MEDWATCH 3500 form and instructions to complete it at *http://www.fda.gov/Safety/MedWatch/HowToReport/DownloadForms/default.htm*.

5. Revise § 803.13 to read as follows:

§ 803.13 Do I need to submit reports in English?

Yes. You must submit all reports required by this part in English.

§ 803.14 [Removed]

6. Remove § 803.14.

7. Amend § 803.18 by revising paragraph (b)(1)(ii) and adding paragraph (b)(1)(iii) to read as follows:

§ 803.18 What are the requirements for establishing and maintaining MDR files or records that apply to me?

* * * * *

(b)(1) * * *

(ii) Copies of all reports submitted under this part (whether paper or electronic), and of all other information related to the event that you submitted to us or other entities such as an importer, distributor, or manufacturer.

(iii) Copies of all electronic acknowledgments FDA sends you in response to your electronic submissions.

* * * * *

8. Amend § 803.19 by revising paragraphs (b) and (e) to read as follows:

§ 803.19 Are there exemptions, variances, or alternative forms of adverse event reporting requirements?

* * * * *

(b) If you are a manufacturer, importer, or user facility, you may request an exemption or variance from any or all of the reporting requirements in this part, including the requirements of § 803.12(a). You must submit the request to us in writing at the following address: MDR Exemption Requests, Office of Surveillance and Biometrics (HFZ–530), 1350 Piccard Dr., Rockville, MD 20850. Your request must include information necessary to identify you and the device; a complete statement of the request for exemption, variance, or alternative reporting; and an explanation why your request is justified. If you are requesting a variance to the requirement to submit reports to FDA in electronic format, under § 803.12(a), your request should indicate for how long you would require this variance.

* * * * *

(e) If we grant your request for a reporting modification, you must submit any reports or information required in our approval of the modification. The conditions of the approval will replace and supersede the regular reporting requirement specified in this part until such time that we revoke or modify the alternative reporting requirements in accordance with paragraph (d) of this section, or until the date specified in our response granting your variance, at which time, the provisions of this part will again apply.

9. In § 803.20, revise paragraph (a), redesignate paragraphs (b) and (c) as paragraphs (c) and (d), and add new paragraph (b) to read as follows:

§ 803.20 How do I complete and submit an individual adverse event report?

(a) If you are a health professional or consumer, you may submit voluntary reports to FDA regarding devices or other FDA-regulated products using the FDA Form 3500.

(b) A mandatory electronic submission from a user facility, importer, or manufacturer, must contain the information from the applicable blocks of FDA Form 3500A. All electronic submissions must include information about the patient, the event, the device, and the ''initial reporter.'' An electronic submission from a user facility or importer must include the information from block F. An electronic submission from a manufacturer must include the information from blocks G and H. If you are a manufacturer and you receive a report from a user facility or importer, you must incorporate that information in your electronic submission and include any corrected or missing information.

* * * * *

10. Add § 803.23 to read as follows:

§ 803.23 Where can I find information on how to prepare and submit an MDR in electronic format?

(a) You may obtain information on how to prepare and submit reports in an electronic format that FDA can process, review, and archive at *http://www.fda.gov/ForIndustry/FDAeSubmitter/ucm107903.htm*.

(b) We may sometimes update information on how to prepare and submit reports electronically. If we do make modifications, we will ensure that we alert reporters by updating the eMDR Web page.

11. Amend § 803.30 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 803.30 If I am a user facility, what reporting requirements apply to me?

(a) * * *

(1) *Reports of death*. You must submit a report to us as soon as practicable but no more than 10 work days after the day that you become aware of information, from any source, that reasonably suggests that a device has or may have caused or contributed to the death of a patient of your facility. You must also submit the report to the device manufacturer, if known. You must submit the information required by § 803.32. Reports sent to the agency must be submitted in accordance with the requirements of § 803.12(a).

(2) *Reports of serious injury*. You must submit a report to the manufacturer of the device no later than 10 work days after the day that you become aware of information, from any source, that reasonably suggests that a device has or may have caused or contributed to a serious injury to a patient of your facility. If the manufacturer is not known, you must submit the report to us. You must report information required by § 803.32. Reports sent to the agency must be submitted in accordance with the requirements of § 803.12(a).

* * * * *

12. Amend § 803.32 by revising paragraphs (b)(4) and (c) to read as follows:

§ 803.32 If I am a user facility, what information must I submit in my individual adverse event reports?

* * * * *

(b) * * *

(4) Date of this report;

* * * * *

(c) Device information (Form 3500A, Block D). You must submit the following:

(1) Brand name;

(2) Product Code, if known, and Common Device Name;

(3) Manufacturer name, city, and state;

(4) Model number, catalog number, serial number, lot number, or other identifying number, and expiration date;

(5) Operator of the device (health professional, lay user/ patient, other);

(6) Date of device implantation (month, day, year), if applicable;

(7) Date of device explantation (month, day, year), if applicable;

(8) Whether the device is a single-use device that was reprocessed and reused on a patient (Yes, No)?

(9) If the device is a single-use device that was reprocessed and reused on a patient (yes to paragraph (c)(8) of this section), the name and address of the reprocessor;

(10) Whether the device was available for evaluation and whether the device was returned to the manufacturer; if so, the date it was returned to the manufacturer; and

(11) Concomitant medical products and therapy dates. (Do not report products that were used to treat the event.)

* * * * *

13. Revise § 803.33 to read as follows:

§ 803.33 If I am a user facility, what must I include when I submit an annual report?

(a) You must submit to us an annual report on FDA Form 3419. You must submit an annual report by January 1, of each year. You may obtain this form from any of the following:

(1) The Consolidated Forms and Publications Office, Beltsville Service Center, 6351 Ammendale Rd., Landover, MD 20705;

(2) FDA, MEDWATCH (HF–2), 5600 Fishers Lane, Rockville, MD 20857, 301–827–7240;

(3) Division of Small Manufacturers, International, and Consumer Assistance, Office of Communication, Education, and Radiation Programs, Center for Devices and Radiological Health (CDRH) (HFZ–220), 1350 Piccard Dr., Rockville, MD 20850, by e-mail: *DSMICA@CDRH.FDA.GOV*, or FAX: 301–443–8818; or

(4) On the Internet at *http://www.fda.gov/Safety/MedWatch/HowToReport/DownloadForms/default.htm*.

(b) You must clearly identify your annual report as such. You must submit your annual report to FDA, CDRH, Medical Device Reporting, P.O. Box 3002, Rockville, MD 20847–3002. Your annual report must include:

(1) Your CMS provider number used for medical device reports, or the number assigned by us for reporting purposes in accordance with § 803.3;

(2) Reporting year;

(3) Your name and complete address;

(4) Total number of reports attached or summarized;

(5) Date of the annual report and report numbers identifying the range of medical device reports that you submitted during the report period (e.g., 1234567890–2007–0001 through 1000);

(6) Name, position title, and complete address of the individual designated as your contact person responsible for reporting to us and whether that person is a new contact for you; and

(7) Information for each reportable event that occurred during the annual reporting period including:

(i) Report number;

(ii) Name and address of the device manufacturer;

(iii) Device brand name and common name;

(iv) Product model, catalog, serial and lot number;

(v) A brief description of the event reported to the manufacturer and/or us; and

(vi) Where the report was submitted, i.e., to the manufacturer, importer, or us.

(c) In lieu of submitting the information in paragraph (b)(7) of this section, you may submit a copy of each medical device report that you submitted to the manufacturers and/or to us during the reporting period.

(d) If you did not submit any medical device reports to manufacturers or us during the time period, you do not need to submit an annual report.

14. Revise § 803.40 to read as follows:

§ 803.40 If I am an importer, what reporting requirements apply to me?

(a) *Reports of deaths or serious injuries.* You must submit a report to us, and a copy of this report to the manufacturer, as soon as practicable, but no later than 30 calendar days after the day that you receive or otherwise become aware of information from any source, including user facilities, individuals, or medical or scientific literature, whether published or unpublished, that reasonably suggests that one of your marketed devices may have caused or contributed to a death or serious injury. You must submit the information required by § 803.42. Reports must be submitted in accordance with the requirements of § 803.12(a).

(b) *Reports of malfunctions.* You must submit a report to the manufacturer as soon as practicable but no later than 30 calendar days after the day that you receive or otherwise become aware of information from any source, including user facilities, individuals, or through your own research, testing, evaluation, servicing, or maintenance of one of your devices, that reasonably suggests that one of your devices has malfunctioned and that this device or a similar device that you market would be likely to cause or contribute to a death or serious injury if the malfunction were to recur. You must submit the information required by § 803.42.

15. Amend § 803.42 by revising paragraphs (b)(4) and (c) to read as follows:

§ 803.42 If I am an importer, what information must I submit in my individual adverse event reports?

* * * * *

(b) * * *

(4) Date of this report;

* * * * *

(c) Device information (Form 3500A, Block D). You must submit the following:

(1) Brand name;

(2) Product Code, if known, and Common Device Name;

(3) Manufacturer name, city, and state;

(4) Model number, catalog number, serial number, lot number, or other identifying number, and expiration date;

(5) Operator of the device (health professional, lay user/patient, other);

(6) Date of device implantation (month, day, year), if applicable;

(7) Date of device explantation (month, day, year), if applicable;

(8) Whether the device is a single-use device that was reprocessed and reused on a patient (Yes, No)?

(9) If the device is a single-use device that was reprocessed and reused on a patient (yes to paragraph (c)(8) of this section), the name and address of the reprocessor;

(10) Whether the device was available for evaluation and whether the device was returned to the manufacturer; if so, the date it was returned to the manufacturer; and

(11) Concomitant medical products and therapy dates. (Do not report products that were used to treat the event.)

* * * * *

16. Amend § 803.50 by revising paragraph (a) introductory text and paragraph (b)(3) to read as follows:

§ 803.50 If I am a manufacturer, what reporting requirements apply to me?

(a) If you are a manufacturer, you must report to us the information required by § 803.52 in accordance with the requirements of § 803.12(a), no later than 30 calendar days after the day that you receive or otherwise become aware of information, from any source, that reasonably suggests that a device that you market:

* * * * *

(b) * * *

(3) You are also responsible for conducting an investigation of each event and evaluating the cause of the event. If you cannot submit complete information on a report, you must provide a statement explaining why this information was incomplete and the steps you took to obtain the information. If you later obtain any required information that was not available at the time you filed your initial report, you must submit this information in a supplemental report under § 803.56 in accordance with the requirements of § 803.12(a).

17. Amend § 803.52 by revising paragraphs (b)(4), (c), and (e) to read as follows:

§ 803.52 If I am a manufacturer, what information must I submit in my individual adverse event reports?

* * * * *

(b) * * *

(4) Date of this report;

* * * * *

(c) Device information (Form 3500A, Block D). You must submit the following:

(1) Brand name;

(2) Product code, if known, and Common Device Name;

(3) Manufacturer name, city, and state;

(4) Model number, catalog number, serial number, lot number, or other identifying number, and expiration date;

(5) Operator of the device (health professional, lay user/patient, other);

(6) Date of device implantation (month, day, year), if applicable;

(7) Date of device explantation (month, day, year), if applicable;

(8) Whether the device is a single-use device that was reprocessed and reused on a patient (Yes, No)?

(9) If the device is a single-use device that was reprocessed and reused on a patient (yes to paragraph (c)(8) of this section), the name and address of the reprocessor;

(10) Whether the device was available for evaluation and whether the device was returned to the manufacturer; if so, the date it was returned to the manufacturer; and

(11) Concomitant medical products and therapy dates. (Do not report products that were used to treat the event.)

* * * * *

(e) Reporting information for all manufacturers (Form 3500A, Block G). You must submit the following:

(1) Your reporting office's contact name and address and device manufacturing site;

(2) The contact's telephone number;

(3) Your report sources;

(4) Date received by you (month, day, year);

(5) PMA/510k Number and whether or not the product is a combination product;

(6) Type of report being submitted (e.g., 5–day, initial, followup); and

(7) Your report number.

* * * * *

18. Revise the introductory text of § 803.53 to read as follows:

§ 803.53 If I am a manufacturer, in which circumstances must I submit a 5-day report?

You must submit a 5-day report to us with the information required by § 803.52 in accordance with the requirements of § 803.12(a) no later than 5 work days after the day that you become aware that:

* * * * *

19. Amend § 803.56 by revising the introductory text and paragraphs (a) and (c) to read as follows:

§ 803.56 If I am a manufacturer, in what circumstances must I submit a supplemental or followup report and what are the requirements for such reports?

If you are a manufacturer, when you obtain information required under this part that you did not provide because it was not known or was not available when you submitted the initial report, you must submit the supplemental information to us within 30 calendar days of the day that you receive this information. You must submit the supplemental or followup report in accordance with the requirements of § 803.12(a). On a supplemental or followup report, you must:

(a) Indicate that the report being submitted is a supplemental or followup report;

* * * * *

(c) Include only the new, changed, or corrected information.

Dated: August 11, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–19683 Filed 8–20–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–331]

Schedules of Controlled Substances: Placement of 5-Methoxy-N,N-Dimethyltryptamine Into Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Deputy Administrator of the Drug Enforcement Administration (DEA) is issuing this notice of proposed rulemaking to place the substance 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT) and its salts into schedule I of the Controlled Substances Act (CSA). This proposed action is based on a recommendation from the Acting Assistant Secretary for Health of the Department of Health and Human Services (DHHS) and on an evaluation of the relevant data by DEA. If finalized as proposed, this action would impose the criminal sanctions and regulatory controls of schedule I substances under the CSA on the manufacture, distribution, dispensing, importation, exportation, and possession of 5-MeO-DMT.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before September 21, 2009. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–331'' on all written and electronic correspondence. Written comments being sent via regular or express mail should be sent to the Drug Enforcement Administration, *Attention:* DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152. Comments may be sent to DEA by sending an electronic message to *dea.diversion.policy@usdoj.gov.* Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept electronic comments containing Microsoft Word, WordPerfect, Adobe PDF, or Excel files only. DEA will not accept any file format other than those specifically listed here.

Please note that DEA is requesting that electronic comments be submitted before midnight Eastern time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at midnight Eastern time on the day the comment period closes. Commenters in time zones other than Eastern time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152, *Telephone:* (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Comments and Requests for Hearing

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. 556 and 557). All persons are invited to submit their comments or objections with regard to this proposal. Requests for a hearing may be submitted by interested persons and must conform to the requirements of 21 CFR 1308.44 and 1316.47. The request should state, with particularity, the issues concerning which the person desires to be heard and the requestor's interest in the proceeding. Only interested persons, defined in the regulations as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811),'' may request a hearing.

21 CFR 1308.42. Please note that DEA may grant a hearing only ''for the purpose of receiving factual evidence and expert opinion regarding the issues involved in the issuance, amendment or repeal of a rule issuable'' pursuant to 21 U.S.C. 811(a). All correspondence regarding this matter should be submitted to the DEA using the address information provided above.

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Drug

Enforcement Administration's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Drug Enforcement Administration's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Background

Explanation of 5-methoxy-N,N-dimethyltryptamine

5-MeO-DMT is related to the schedule I hallucinogen, N,N-dimethyltryptamine (DMT), in its chemical structure and pharmacological properties. 5-MeO-DMT also shares pharmacological similarities with several other schedule I hallucinogens such as 2,5-dimethoxy-4-methylamphetamine (DOM), lysergic acid diethylamide (LSD) and mescaline. In animal drug discrimination studies, DOM, LSD, mescaline, DMT, and alpha-methyltryptamine (AMT) fully substitute for the discriminative stimulus cue of 5-MeO-DMT. In *in vitro* receptor binding studies, 5-MeO-DMT, similar to DMT and other schedule I hallucinogens, binds to central serotonin 2 (5-HT_2) receptors.

Studies show that the potencies of hallucinogens in humans correlate with their drug affinities for the 5-HT_2 receptor and discriminative stimulus potencies. Accordingly, 5-MeO-DMT produces psychoactive effects in humans following inhalation (~6–20 mg), intravenous injection (~0.7–3.1 mg), sublingual (~10 mg), intranasal insufflation (~10 mg) and oral (~30 mg) (if encapsulated or taken with a monoamine oxidase inhibitor) routes of administration. Anecdotal reports from humans who have used 5-MeO-DMT describe hallucinogenic effects similar to those produced by DMT. 5-MeO-DMT, however, is reported to be 4 to 5-fold more potent than DMT when administered by inhalation, sublingual or oral (if encapsulated) routes of administration.

Control of 5-methoxy-N,N-dimethyltryptamine

Evidence of the abuse of 5-MeO-DMT was first reported in 1999 by federal law enforcement personnel. According to the System to Retrieve Information on Drug Evidence (STRIDE), a federal database for seized drug exhibits analyzed by DEA laboratories, from January 1999 to December 2008, law enforcement seized 33 drug exhibits and filed 23 cases pertaining to the trafficking, distribution and abuse of 5-MeO-DMT. The seized drug exhibits comprised 89 grams of powder and 10 milliliters of liquid containing 5-MeO-DMT. Since 2004, National Forensic Laboratory Information System (NFLIS), a database for drug cases analyzed by federal, state and local forensic laboratories, registered 23 state and local cases involving 27 analyzed items containing 5-MeO-DMT.

There is evidence of clandestine laboratory operations to synthesize 5-MeO-DMT. 5-MeO-DMT has been encountered in powder, capsule, and liquid forms. 5-MeO-DMT is typically abused either by smoking or insufflating the powder. Investigations by federal law enforcement indicate that individuals, especially youths and young adults, are purchasing 5-MeO-DMT from Internet-based chemical suppliers. In addition, there are several instances where 5-MeO-DMT was sold as a counterfeit of MDMA.

The risks to the public health associated with the abuse of 5-MeO-DMT are similar to the risks associated with those of schedule I hallucinogens. 5-MeO-DMT can pose serious health risks to the user and general public through its ability to induce hallucinogenic effects and other sensory distortions and impaired judgment. Self-reports that are posted on Internet Web sites describe the abuse of this substance in combination with other controlled drugs such as DMT, N,N-diethyltryptamine (DET), LSD, marijuana, ecstasy, or mushrooms (contains psilocybin and psilocin). This practice of drug abuse involving combinations can pose additional health risks to the users and the general public. These data show that the continued trafficking and abuse of 5-MeO-DMT pose hazards to the public health and safety. Indeed, there have been reports of emergency room admissions and death associated with the abuse of 5-MeO-DMT.

There are no FDA-approved drug products. 5-MeO-DMT has never been approved by the FDA for marketing as a human drug product in the United States and there are no recognized therapeutic uses of 5-MeO-DMT in the United States.

References to the above studies and data may be found in the Health and Human Services scheduling recommendation and DEA's independent analysis, both of which are available on the electronic docket associated with this rulemaking.

Placement of 5-MeO-DMT Into Schedule I

In accordance with 21 U.S.C. 811(b) of the CSA, DEA has gathered and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse, and the relative potential for abuse of 5-MeO-DMT. On February 21, 2007, the Deputy Administrator of the DEA submitted these data to the Acting Assistant Secretary for Health, Department of Health and Human Services. In accordance with 21 U.S.C. 811(b), the Deputy Administrator also requested a scientific and medical evaluation and a scheduling recommendation for 5-MeO-DMT from the Acting Assistant Secretary for Health. On December 18, 2008, the Principal Deputy Assistant Secretary for Health, Department of Health and Human Services (DHHS), sent the Deputy Administrator of the DEA a scientific and medical evaluation and a letter recommending that 5-MeO-DMT and its salts be placed into schedule I of the CSA. Enclosed with the letter was a document prepared by FDA entitled, ''Basis for the Recommendation to Control 5-Methoxy-Dimethyltryptamine (5-MeO-DMT) in Schedule I of the Controlled Substances Act.'' The document contained a review of the factors which the CSA requires the

Secretary to consider (21 U.S.C. 811(b)). The factors considered by the Assistant Secretary of Health and DEA with respect to 5-MeO-DMT were:

(1) Actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effects, if known;

(3) The state of current scientific knowledge regarding the drug;

(4) History and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under the CSA.

Based on the recommendation of the Assistant Secretary for Health, received in accordance with section 201(b) of the Act (21 U.S.C. 811(b)), and the independent review of the available data by DEA, the Deputy Administrator finds that sufficient data exist to support the placement of 5-MeO-DMT into schedule I of the CSA pursuant to 21 U.S.C. 811(a). The specific findings required pursuant to 21 U.S.C. 811 and 812 for 5-MeO-DMT to be placed into schedule I are as follows:

(1) 5-MeO-DMT has a high potential for abuse.

(2)5-MeO-DMT has no currently accepted medical use in treatment in the United States.

(3) There is a lack of accepted safety for use of 5-MeO-DMT under medical supervision.

Regulatory Requirements

If this rule is finalized as proposed, 5-methoxy-N,N-dimethyltryptamine would be subject to regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, dispensing, importation and exportation of a schedule I controlled substance, including the following:

Registration. Any person who manufactures, distributes, dispenses, imports or exports 5-methoxy-N,N-dimethyltryptamine or who engages in research or conducts instructional activities with respect to 5-methoxy-N,N-dimethyltryptamine, or who proposes to engage in such activities, would be required to submit an application for schedule I registration in accordance with part 1301 of Title 21 of the Code of Federal Regulations.

Security. 5-methoxy-N,N-dimethyltryptamine would be subject to schedule I security requirements and must be manufactured, distributed and stored in accordance with §§ 1301.71; 1301.72(a), (c), and (d); 1301.73; 1301.74; 1301.75(a) and (c); and 1301.76 of Title 21 of the Code of Federal Regulations.

Labeling and Packaging. All labels and labeling for commercial containers of 5-methoxy-N,N-dimethyltryptamine which are distributed on or after the effective date of a Final Rule finalizing this regulation would be required to comply with requirements of §§ 1302.03 through 1302.07 of Title 21 of the Code of Federal Regulations.

Quotas. Quotas for 5-methoxy-N,N-dimethyltryptamine would be established pursuant to the requirements of part 1303 of Title 21 of the Code of Federal Regulations.

Inventory. Every registrant required to keep records and who possesses any quantity of 5-methoxy-N,N-dimethyltryptamine upon the effective date of any Final Rule finalizing these regulations would be required to keep an inventory of all stocks of the substance on hand pursuant to §§ 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations. Every registrant who desires registration in schedule I to handle 5-methoxy-N,N-dimethyltryptamine would be required to conduct an inventory of all stocks of the substance.

Records. All registrants who handle 5-methoxy-N,N-dimethyltryptamine would be required to keep records pursuant to §§ 1304.03, 1304.04 1304.21, 1304.22, and 1304.23 of Title 21 of the Code of Federal Regulations.

Reports. All registrants required to submit reports in accordance with § 1304.33 of Title 21 of the Code of Federal Regulations would be required to do so regarding 5-methoxy-N,N-dimethyltryptamine.

Order Forms. All registrants involved in the distribution of 5-methoxy-N,N-dimethyltryptamine would be required to comply with the order form requirements of part 1305 of Title 21 of the Code of Federal Regulations.

Importation and Exportation. All importation and exportation of 5-methoxy-N,N-dimethyltryptamine would be required to be in compliance with part 1312 of Title 21 of the Code of Federal Regulations.

Criminal Liability. Any activity with 5-methoxy-N,N-dimethyltryptamine not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act occurring on or after the effective date of any Final Rule finalizing these regulations would be unlawful.

Regulatory Certifications

Executive Order 12866

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order 12866, section 3(d)(1).

Regulatory Flexibility Act

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This proposed rule, if finalized, would place 5-methoxy-N,N-dimethyltryptamine into schedule I of the Controlled Substances Act.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices: or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign

based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.11 is amended by:

A. Redesignating existing paragraphs (d)(15) through (d)(34) as paragraphs (d)(16) through (d)(35).

B. Adding a new paragraph (d)(15).

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(15) 5-methoxy-N,N-dimethyltryptamine, its isomers, salts and salts of isomers—7431.

Some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT.

* * * * *

Dated: August 12, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–20204 Filed 8–20–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0720]

RIN 1625–AA00

Safety Zone; Ocean City Beachfront Air Show, Ocean City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for the Ocean City Beachfront Air Show, an aerial demonstration to be held over the waters of the Atlantic Ocean adjacent to Ocean City, New Jersey. This Safety Zone is necessary to provide for the safety of life on navigable waters during the event. This proposed action would temporarily restrict vessel traffic in portions of the Atlantic Ocean adjacent to Ocean City, New Jersey during the aerial demonstration.

DATES: Comments and related material must be received by the Coast Guard on or before September 21, 2009 Requests for public meetings must be received by the Coast Guard on or before August 28, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0720 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. *See* the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lieutenant Rebecca Walthour, Chief of Waterways Management Branch, Coast Guard Sector Delaware Bay, at 215–271–4889, e-mail *Rebecca.A.Walthour@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0720), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu, select ''Notices'' and insert ''USCG–2009–0720'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½; by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box, insert USCG–2009–0720 and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with

the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before August 18, 2009, using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

On September 19–20, 2009, the Ocean City Business and Neighborhood Development INC will sponsor the Ocean City Beachfront Air Show. The event will consist of high performance jet aircraft performing low altitude aerial maneuvers over the waters of the Atlantic Ocean adjacent to Ocean City, New Jersey. A fleet of spectator vessels is expected to gather nearby to view the aerial demonstration. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish a temporary safety zone on the North Atlantic Ocean, immediately adjacent to the shoreline at Ocean City, New Jersey. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated areas during the enforcement period. The Patrol Commander will notify the public of specific enforcement times by Marine Radio Safety Broadcast. This regulation will be enforced to prevent personal injury to mariners and damage to vessel traffic during the event.

The temporary safety zone includes all waters offshore from Ocean City, New Jersey, bounded within the following area: Beginning at latitude 39°16′28″ N, longitude 074°33′38″ W, thence southeasterly to latitude 39°16′20″ N, longitude 074°33′30″ W, thence southwesterly to latitude 39°15′38″ N, longitude 074°34′41″ W, thence northwesterly to latitude 39°15′47″ N, longitude 074°34′51″ W, thence returning northeasterly to latitude 39°16′28″ N, longitude 074°33′38″ W. All coordinates listed for the following safety zones reference Datum NAD 1983.

This temporary safety zone will be enforced from 1 p.m. to 3 p.m. on September 19, 2009, and from 12 p.m. (noon) to 4 p.m. on September 20, 2009.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Assessment is unnecessary. Although this regulation restricts vessel traffic from transiting a small segment of coastal waters near Ocean City, New Jersey, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the advance notifications that will be made to the maritime community via marine information broadcasts and area newspapers so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit coastal waters in the vicinity of Ocean City, New Jersey during the event.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 1 p.m. to 3 p.m. on September 19, 2009 and from 12 a.m. (noon) to 4 p.m. on September 20, 2009. Traffic will be allowed to pass through the zone with the permission of the Coast Guard patrol commander. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Rebecca Walthour, Chief of Waterways Management Branch, Coast Guard Sector Delaware Bay, at 215–271–4889, or e-mail *Rebecca.A.Walthour@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves creating a temporary safety zone on the waters of the Atlantic Ocean offshore from Ocean City, New Jersey, which will restrict vessel movement due to a scheduled air show. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05–0720, to read as follows:

§ 165.T05–0720 Safety Zone; Ocean City Beachfront Air Show, Ocean City, NJ.

(a) *Location.* A temporary safety zone is created on the coastal waters of the North Atlantic Ocean, immediately adjacent to the shoreline at Ocean City, NJ, bounded within the following area: beginning at latitude 39°16′28″ N, longitude 074°33′38″ W, thence southeasterly to latitude 39°16′20″ N, longitude 074°33′30″ W, thence southwesterly to latitude 39°15′38″ N, longitude 074°34′41″ W, thence northwesterly to latitude 39°15′47″ N, longitude 074°34′51″ W, thence returning northeasterly to latitude 39°16′28″ N, longitude 074°33′38″ W.

(b) *Regulations.* (1) Under the general regulations governing safety zones in § 165.23, no person or vessel may enter or navigate within this safety zone unless authorized to do so by the Coast Guard or designated representatives. Any person or vessel authorized to enter the safety zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the safety zone immediately if the Coast Guard or designated representative so orders.

(2) All Coast Guard assets enforcing this safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at 215–271–4807.

(3) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(c) *Definition.* As used in this section, *designated representative* means the Commanding Officer of Sector Delaware Bay or any Coast Guard commissioned warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf to assist in enforcing this section.

(d) *Effective period.* This section will be enforced from 1 p.m. to 3 p.m. on September 19, 2009, and from 12 p.m. (noon) to 4 p.m. on September 20, 2009.

Dated: August 7, 2009.

Meredith L. Austin,

Captain, U.S. Coast Guard, Captain of the Port, Delaware Bay.

[FR Doc. E9–20095 Filed 8–20–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 211

[EPA–HQ–OAR–2003–0024; FRL–8947–6]

RIN 2060–A025

Product Noise Labeling; Hearing Protection Devices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period and rescheduled public hearing.

SUMMARY: The Environmental Protection Agency (EPA) is announcing an extension of the public comment period for the proposed rule ''Product Noise Labeling—Hearing Protection Devices'' (the proposed rule is hereinafter referred to as ''HPD Rule''). EPA published a notice of proposed rulemaking on August 5, 2009, in the **Federal Register** (74 FR 39150) which included a request for comments and an offer to hold a public hearing if requested. The public comment period was to end on September 4, 2009, (30 days after publication in the **Federal Register**) and the public hearing, if requested, was to take place on August 25, 2009. The purpose of this document is to extend the public comment period an additional 60 days until November 4, 2009, and to schedule a public hearing on this proposed rule will be held on October 7, 2009. This extension of the comment period and the holding of a public hearing are being provided to allow the public additional time to review the rule and provide EPA with comments on the proposed rule.

DATES: *Comments.* Written comments must be received on or before November 4, 2009.

Public Hearing. The public hearing will be held on Wednesday, October 7, 2009, from 9 a.m. to 5 p.m. Eastern Standard time. The meeting is scheduled for one day and will take place at EPA Headquarters, Room 1153—East building, 1301 Constitution Avenue, NW., Washington, DC 20460. Anyone that would like to speak at the hearing must notify the EPA by September 30, 2009, via the docket.

Persons wishing to make a formal presentation for the record must provide a hard copy of their presentation to the docket not later than September 30, 2009. Scheduling of all presentations will be based on the order in which their request is received.

ADDRESSES: Submit your comments, identified by docket ID number EPA–HQ–OAR–2003–0024, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket and Information Center, EPA Labeling Regulation, Docket Number EPA–HQ–OAR–2003–0024, Environmental Protection Agency, EPA Docket Center, Mailcode 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation (Monday through Friday, from 8:30 a.m. to 4:30 p.m.), excluding legal holidays and special arrangement should be made for deliveries of boxed information. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.
- *Instructions:* Direct your comments to Docket ID Number EPA–HQ–OAR–2003–0024. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name or other content information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defect or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/dockets.*

How Can I Access the Docket?

All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

How Can I Get Copies of This Document, the Proposed Rule, and Other Related Information?

The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0024.

FOR FURTHER INFORMATION CONTACT: Ms. Catrice Jefferson, U.S. Environmental Protection Agency, Office of Air and Radiation, Mail Code 6103A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone Number—(202) 564–1668; Fax Number—(202) 564–1554; and e-mail Address—*jefferson.catrice@epa.gov.*

SUPPLEMENTARY INFORMATION:

Extension of Comment Period: EPA received requests for an extension of the public comment period from various parties ranging from 60 to 90 days. After considering all of these comments, EPA has determined that an extension of an additional 60 days is an appropriate amount of time to provide the public for submission of meaningful comments on the proposed rule. Accordingly, the public comment period for the HPD proposed rulemaking is extended until November 4, 2009. EPA does not anticipate any further extension of the comment period at this time.

Reschedule of Public Hearing: EPA received requests for a public hearing. In view of the above extension of the comment period the EPA is establishing October 7, 2009 as the date for the public hearing that was originally scheduled for August 25, 2009. EPA believes that this postponement will provide adequate time for interested

parties to develop their verbal comments and presentations.

Dated: August 17, 2009.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. E9–20172 Filed 8–20–09; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 74, No. 161
Friday, August 21, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. APHIS–2008–0096]

National Aquatic Animal Health Plan for the United States; Notice of Availability

AGENCY: Animal and Plant Health Inspection Service, USDA; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, DOC; and Fish and Wildlife Service, DOI.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that a National Aquatic Animal Health Plan (NAAHP) for the United States is being made available for public review and comment. The NAAHP was developed by a Task Force led by the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department Agriculture, the Fish and Wildlife Service (FWS) of the U.S. Department of the Interior, and the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce. It is anticipated that this plan will provide a framework for how APHIS, FWS, and NMFS should develop programs for diseases that affect the health of aquatic animals such as finfish, crustaceans, and mollusks.

DATES: APHIS, FWS, and NMFS will consider all comments received on or before October 20, 2009.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0096* to submit or view comments and to view supporting and related materials available electronically. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. The agency will accept anonymous comments (enter ''N/A'' in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0096, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS 2008–0096.

Reading Room: You may read any comments that we receive on the National Aquatic Animal Health Plan in the APHIS reading room. The reading room is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*. Additional information about FWS is available on the Internet at *http://www.fws.gov*. Additional information about the NOAA Aquaculture Program is available on the Internet at *http://aquaculture.noaa.gov*.

FOR FURTHER INFORMATION CONTACT:

APHIS: Dr. P. Gary Egrie, Veterinary Medical Officer, Aquaculture, Swine, Equine, and Poultry Health Programs, VS, APHIS, 4700 River Road, Unit 46, Riverdale, MD 20737–1231; (301) 734–0695.

NMFS: Mr. Kevin Amos, National Aquatic Animal Health Coordinator, NOAA Aquaculture Program, 1315 East-West Hwy., SSMC#3 Rm. 13137, Silver Spring, MD 20910; (360) 709–9001.

FWS: Ray Brunson, Project Leader, FWS, Olympia Fish Health Center, 3859 Martin Way E, Suite 101, Olympia, WA 98506; 360–753–9046.

SUPPLEMENTARY INFORMATION:

Background

Aquaculture, which includes the managed production of aquatic animals, is practiced throughout the United States and its territories by private, public, and tribal entities. Aquaculture continues to grow as a major agribusiness enterprise. The production of aquatic animals is a critical economic and environmental activity that provides a source of healthy food, employment, recreation, and supplementation of wild fishery stocks for harvest by commercial and tribal harvesters, as well as protection and restoration of aquatic animals that face extinction.

Disease has the potential to pose a great threat to the success of aquaculture. Developing and implementing a national aquatic animal health plan has become urgent for two reasons: The growing need to protect our domestic commerce and resources, and the advent of new health regulations by foreign governments that restrict the importation of live and processed aquatic animals from the United States.

In recent years, outbreaks of infectious salmon anemia and spring viremia of carp in private U.S. aquaculture operations resulted in losses of over $10 million. Also recently, a new strain of viral hemorrhagic septicemia has affected several wild populations of fish in the Great Lakes region of the United States. If the United States maintains a limited and disparate supporting infrastructure to diagnose, report, educate, manage, and develop surveillance and control programs, the presence of these or the discovery of other aquatic animal pathogens in this country could lead to restriction or elimination of international commerce in some aquatic animals for the United States.

The National Aquatic Animal Health Plan (NAAHP)

In 2001, the Joint Subcommittee on Aquaculture (JSA), under the auspices of the Executive Office of the President, Office of Science and Technology Policy, commissioned a national task force to develop a national health plan for aquatic animals. Three Federal Departments with primary responsibility for aquatic animal health are leading the task force—the U.S. Department of Agriculture (USDA), the U.S. Department of Commerce (Commerce), and the U.S. Department of the Interior (DOI). USDA's Animal and Plant Health Inspection Service (APHIS) protects the health of U.S. agriculture, thereby improving agricultural productivity and competiveness and contributing to the national economy and public health. Commerce's National Marine Fisheries Service (NMFS) is dedicated to the stewardship of living marine resources through science-based conservation and management, and the promotion of healthy ecosystems. DOI's Fish and Wildlife Service (FWS) works with others to conserve, protect, and enhance fish, wildlife, and plants, and their habitats for the continuing benefit of the American people. The FWS' Aquatic Animal Health Program strives to conserve our nation's fisheries and aquatic resources.

Once the JSA commissioned the task force to develop the NAAHP, the task force recognized that the first outreach activity would be to bring together all interested parties, inform them of the intent to develop a plan, and request their recommendations regarding content. The recommendations from stakeholders shaped the mission and the objectives for the NAAHP, which was again vetted by interested parties and reviewed by the JSA itself. The mission of the NAAHP is to:

- Facilitate the legal movement of all aquatic animals, their eggs, and their products in interstate and international commerce;
- Protect the health and thereby improve the quality and productivity of farmed and wild aquatic animals;
- Ensure the availability of diagnostic, inspection, and certification services; and
- Minimize the impacts of diseases when they occur in farmed or wild aquatic animals.

Following approval of the mission of the NAAHP by the JSA, the task force began soliciting information for the contents of the chapters. Technical group meetings were held, at which information was solicited from industry, State, tribal, Federal and academic partners. A total of 12 group meetings were held between January 2003 and November 2006. Many of the technical groups focused on species-specific disease issues with regard to surveillance and disease management. The task force's technical team used information from these groups and from other meetings to draft the NAAHP's chapters.

The goal of the NAAHP is to provide recommendations to industry, States, tribes, Federal agencies, and other stakeholders to meet the mission of the Plan. These recommendations are not necessarily in support of an overarching regulatory program to be implemented by the Federal Government. Rather, the recommendations relate to activities for consideration by all stakeholders to meet the mission of the Plan.

Four principles have been used by the task force to develop the NAAHP. They are:

- Construct the Plan using established scientific principles of fish health management;
- Develop the Plan in an open and visible process in which stakeholders have opportunities to provide information;
- Recognize that limited resources are available; therefore the plan must be affordable, make sense to stakeholders, and be capable of implementation; and
- Develop standards that are consistent with World Trade Organization and World Organization for Animal Health (OIE) guidelines and, to the extent possible, are consistent with Federal, State, and tribal regulations already in existence in the United States.

Recommendations and Implementation

While the NAAHP is not a regulation, it provides general principles and guidelines for how the U.S. Federal Agencies with jurisdiction over aquatic animal health (APHIS, NMFS, and FWS) should take action to protect our farmed and wild resources, facilitate safe commerce, and make available laboratory testing, training, and other programs as needed to implement the NAAHP. The key recommendations made by the task force are related to the following areas:

- Prevention of the introduction or spread of program aquatic animal pathogens (PAAPs);
- Response to PAAPs and reportable aquatic animal pathogens (RAAPs);
- Health certification;
- Surveillance schemes for PAAPs and RAAPs;
- Laboratories, standardized testing, quality testing, and approved personnel; and
- Education and training.

In addition to the recommendation areas listed, activities addressed in the NAAHP include the following: Definition of pathogens of national concern; creation and implementation of disease management zones; identification of priority areas for research and development in aquatic animal health, including identification of existing funding structures and recommendations for leveraging resources; description of strategies for continued outreach and awareness regarding national aquatic animal health strategies and the NAAHP; and implementation of the NAAHP.

Due to limited resources, the NAAHP must be developed based on the priorities and recommendations identified within the Plan, and implementation of these priorities will be contingent upon funding. However, continued stakeholder consultation is necessary to ensure that the priorities and recommendations in the Plan are updated if necessary. Therefore, the establishment of a National Advisory Committee for Aquatic Animal Health is of utmost importance to a successful NAAHP.

Such a committee could be established as a permanent advisory committee—chartered under the Federal Advisory Committee Act (FACA)—to the Federal agencies responsible for implementing programs related to the NAAHP. Alternatively, it could be created as a subcommittee of a currently established FACA committee, such as the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases within the USDA. In either case, the Advisory Committee structure can provide information to agencies regarding issues of importance and, in an environment of fiscal conservation, assist the Federal agencies in allocating resources for aquatic animal health issues appropriately. Such an advisory committee should be large enough to ensure broad stakeholder representation, but small enough to ensure its effectiveness.

The next step is for the Federal agencies to take the recommendations and suggested actions in the Plan and make them into policies, guidelines, and if appropriate, regulations. As with the development of the NAAHP, implementation must be a collaborative process that includes information from States, tribes, industry, and other stakeholders, and the timeframe for certain activities may be influenced by available funding.

Accessing and Commenting on the NAAHP

We are making the NAAHP dated October 2008 available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The NAAHP may be viewed on the Federal eRulemaking Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov). You may request paper copies of the draft document by contacting the persons listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the draft document when requesting copies. The NAAHP may also be viewed at APHIS' Web site at *http://www.aphis.usda.gov/animal_health/animal_dis_spec/aquaculture/,* at FWS' Web site at *http://www.fws.gov/fisheries/,* or at NOAA's aquaculture Web site at *http://aquaculture.noaa.gov.* The NAAHP is also available for review in the APHIS reading room. (Information on the location and hours of the APHIS reading room is listed under the heading **ADDRESSES** at the beginning of this notice.)

Dated: August 11, 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

Dated: August 11, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E9–19702 Filed 8–20–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Basin Electric Power Cooperative; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a Finding of No Significant Impact (FONSI) with respect to a request from Basin Electric Power Cooperative for assistance to finance the construction, operation, and maintenance of a 115.5 MW wind-powered electric generating facility (the Proposal) in Ward County, North Dakota.

ADDRESSES: The FONSI is available for public review at the USDA Rural Utilities Service's Web site—*http://www.usda.gov/rus/water/ees/ea.htm* or at 1400 Independence Avenue, SW., Room 2244, Stop 1571, Washington, DC 20250–1571; and at Basin's headquarters office located at 1717 East Interstate Avenue, Bismarck, ND 58503–0564.

CONTACTS: To obtain copies of the FONSI or for further information, contact Dennis Rankin, Environmental Protection Specialist, USDA, Rural Utilities Service, 1400 Independence Avenue, SW., Stop 1571 Washington, DC 20250–1571, *Telephone:* (202) 720–1953 or *e-mail: dennis.rankin@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: Basin Electric proposes to construct a new 115.5 MW wind generation facility in north-central North Dakota. The project will include seventy-seven (77) 1.5 MW wind turbine generators and be located approximately 15 miles south of Minot, North Dakota. Tetra Tech, an environmental consulting firm, prepared an Environmental Report for RUS. RUS conducted an independent evaluation of the Environmental Report and agreed that it accurately assessed the impacts of the Proposal. RUS accepted the document as its Environmental Assessment and published the document for a 30-day public comment period. The applicant is responsible for obtaining all permits required to construct the Proposal.

Pursuant to 36 CFR 800.4(d)(1) of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f, RUS made a finding that this Proposal will not affect historic properties. RUS received no objection to this finding of effect from the North Dakota State Historic Preservation Office or other consulting parties. RUS has determined this finding of no historic properties affected made pursuant to Section 106 of NHPA.

In accordance with the National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR 1500–1508), and RUS' Environmental Policies and Procedures (7 CFR Part 1794), RUS has determined that the environmental impacts of the Proposal have been adequately addressed and that no significant impacts to the quality of the human environment would result from the construction and operation of the Proposal. Any final action by RUS related to the Proposal will be subject to, and contingent upon, compliance with all relevant federal and state environmental laws and regulations. Since RUS' action will not result in significant impacts to the quality of the human environment, the preparation of an Environmental Impact Statement related to the proposed project is not necessary.

Dated: August 14, 2009.

Nivin Elgohary,

Acting Assistant Administrator—Electric, Rural Utilities Service.

[FR Doc. E9–20076 Filed 8–20–09; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Meeting of the Agricultural Air Quality Task Force

AGENCY: Natural Resources Conservation Service, United States Department of Agriculture.

ACTION: Notice of meeting.

SUMMARY: The Agricultural Air Quality Task Force (AAQTF) will meet to continue discussions on air quality issues relating to agriculture.

DATES: The meeting will convene at 8 a.m. on Wednesday through Friday, September 16–18, 2009, and conclude at 5 p.m. on Wednesday, 5 p.m. on Thursday, and 12 noon on Friday, respectively. A public comment period will be held on Thursday, September 17, 2009. Individuals making oral presentations should register at the meeting site and bring 50 copies of materials they would like distributed.

ADDRESSES: The meeting will be held at the Embassy Suites on the River located at 101 East Locust Street, Des Moines, Iowa 50309; Telephone: (515) 244–1700.

FOR FURTHER INFORMATION CONTACT: Michele Laur, Designated Federal Official, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6165 South Building, Washington, DC 20013; *Telephone:* (202) 720–1858; or *e-mail: michele.laur@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information concerning AAQTF may be viewed on the World Wide Web at: *http://www.airquality.nrcs.usda.gov/AAQTF/.*

Agenda

Wednesday, September 16, 2009

A. Welcome to Iowa
B. Discussion of Iowa Air Quality Issues

C. Discussion of Greenhouse Gas

(Time will be reserved on September 17, 2009, to receive public comment. Individual presentations will be limited to 5 minutes.)

Thursday, September 17, 2009

D. Discussion of Engine Emissions and Regulations
E. Discussion of Reactive Nitrogen
F. Public Comment Period

Friday, September 18, 2009

G. Discussion of Subcommittee Recommendations
H. Next Meeting, Time, and Place

[*]*Please note that the timing of events in the agenda is subject to change to accommodate changing schedules of expected speakers.*

Procedural

This meeting is open to the public. At the discretion of the Chairman, members of the public may give oral presentations during the meeting. Those wishing to make oral presentations should register in person at the meeting site. Those wishing to distribute written material at the meeting (in conjunction with spoken comments), must bring 50 copies of the material.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Ms. Laur. USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA (not all prohibited bases apply to all programs). Persons with disabilities who require alternate means for communication of program information (Braille, large print, audio tape, etc.) should contact the USDA's Target Center at: (202) 720–2000 (voice and TDD). USDA is an equal opportunity provider and employer.

Signed this 18th day of August, 2009, in Washington, DC.

Dave White,

Chief.

[FR Doc. E9–20137 Filed 8–20–09; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Soil and Water Resources Conservation Act

AGENCY: Natural Resources Conservation Service, United States Department of Agriculture.

ACTION: Notice of public meeting.

SUMMARY: The Natural Resources Conservation Service (NRCS) will hold a public meeting to gather stakeholder input on important natural resource concerns and program approaches to address these natural resource concerns in the next decade.

On June 22, 2008, Congress reauthorized the Soil and Water Resources Conservation Act (RCA), 16 U.S.C. 2001–2009, through amendments in the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246). In the reauthorization, Congress extended RCA through 2018 and called for the first report to be delivered to Congress by January 2011. RCA provides the Department of Agriculture (USDA) with broad strategic assessment and planning authority and calls for the development of a national program to guide USDA activities for the conservation, protection, and enhancement of soil, water, and related natural resources. Through RCA, USDA appraises the status and trends of soil, water, and related resources on non-Federal land; assesses their capability to meet present and future demands; evaluates current and needed programs, policies, and authorities; and develops a national soil and water conservation program to give direction for USDA soil and water conservation activities.

Public participation is a central element of the RCA process. USDA will hold listening sessions to provide the public with an opportunity to comment on conservation priorities, program approaches, future conservation needs, and opportunities to improve the appraisal process.

DATES: The meeting will be held on the following date and location:

Meeting location	Date	Local time	Co-host
Charleston Marriott Town Center, 200 Lee Street East, Charleston, West Virginia 25301.	9/14/09	10:30 a.m.–12:30 p.m. ...	National Association of Conservation Agencies—Annual Meeting.

FOR FURTHER INFORMATION CONTACT: Denise Coleman, Acting Director, Strategic and Performance Planning Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 4237, South Building, Washington, DC 20250; Telephone: (202) 690–0467; or Fax: (202) 720–3057. Submit electronic requests for additional information to: *RCA@wdc.usda.gov.*

Signed this 18th day of August, 2009, in Washington, DC.

Dave White,

Chief.

[FR Doc. E9–20138 Filed 8–20–09; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on September 10, 2009, from 3 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Lake County Board of Supervisor's Chambers at 255 North Forbes Street, Lakeport or Conference Room C.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Committee Coordinator, USDA. Mendocino National Forest, Upper Lake Ranger District, 10025 Elk Mountain Road, Upper Lake, CA 95485. (707) 275–2361: E-mail *dmcintosh@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Roll Call/Establish Quorum; (2) Review Minutes from the May 14, 2009 Meeting; (3) Project Review and Discussion; (4) Recommend Projects/Vote; (5) Discuss Project Cost Accounting USFS/County of Lake; (6) Set Next Meeting Date; (7) Public Comment Period: Public input opportunity will be provided and individuals will have the opportunity to

address the Committee at that time; (8) Adjourn.

Dated: August 11, 2009.

Lee D. Johnson,

Designated Federal Officer.

[FR Doc. E9–20066 Filed 8–20–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons.

OMB Control Number: 0608–0066.

Form Number(s): BE–45.

Type of Request: Extension of a currently approved collection.

Burden Hours: 9,600.

Number of Respondents: 1,200.

Average Hours per Response: 8.

Needs and Uses: The U.S. Government requires data from the BE–45, Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons, to obtain accurate and up-to-date information on transactions in reinsurance and other insurance transactions between U.S. insurance companies and foreign persons. The data collected will be used in monitoring U.S. exports and imports of insurance services; analyzing their impact on the U.S. and foreign economies; supporting U.S. international commercial policy on such services; compiling the international transactions; national income and product, and input-output accounts of the United States; assessing U.S. competitiveness in international trade in services; and improving the ability of U.S. businesses to identify and evaluate market opportunities.

Affected Public: Business or other for-profit organizations.

Frequency: Quarterly.

Respondents Obligation: Mandatory.

Legal Authority: Title 22 U.S.C., sections 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal may be obtained by writing Departmental Paperwork Clearance Officer, Diana Hynek, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *dHynek@doc.gov.*

Send comments on the proposed information collection within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, via e-mail at *pbugg@omb.eop.gov* or by fax at (202) 395–7245.

Dated: August 18, 2009.

Gwellnar Banks,

Management Analyst, Office of Chief Information Officer.

[FR Doc. E9–20122 Filed 8–20–09; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–822, A–583–843, A–552–806]

Postponement of Preliminary Determination of Antidumping Duty Investigations: Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and the Socialist Republic of Vietnam

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 21, 2009.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun at (202) 482–5760 (Indonesia) or Dmitry Vladimirov at (202) 482–0665 (Taiwan), AD/CVD Operations, Office 5; Maisha Cryor at (202) 482–5831 (Socialist Republic of Vietnam), AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determinations

On April 20, 2009, the Department of Commerce (the Department) initiated the antidumping duty investigations on polyethylene retail carrier bags from Indonesia, Taiwan, and the Socialist Republic of Vietnam. See *Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 74 FR 19049 (April 27, 2009). The notice of initiation stated that the Department would issue its preliminary determinations for these investigations no later than 140 days after the issuance of the initiation in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.205(b)(1) unless postponed. On August 13, 2009, Hilex Poly Co., LLC, and Superbag Corporation (the petitioners) made timely requests pursuant to 19 CFR 351.205(b)(2) and (e) for postponement of the preliminary determinations in these investigations.

Taiwan

With regard to Taiwan, the petitioners requested a 42–day postponement of the preliminary determination in order to allow the Department additional time to resolve a number of issues in the investigation.

For reasons identified by the petitioners and because there are no compelling reasons to deny the request, the Department is postponing the deadline for the preliminary determination in accordance with section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e) by 42 days to October 19, 2009. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless extended.

Indonesia and Vietnam

With regard to Indonesia and Vietnam, the petitioners requested a 50–day postponement of the preliminary determinations in order to allow the Department additional time to resolve a number of complex issues in the investigations.

For reasons identified by the petitioners and because there are no compelling reasons to deny the requests, the Department is postponing the deadline for the preliminary determinations in accordance with section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e) by 50 days to October 27, 2009. The deadline for the final determinations will continue to be 75 days after the date of the preliminary determinations, unless extended.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: August 17, 2009.

Carole A. Showers,

Acting Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. E9–20140 Filed 8–20–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Petroleum Wax Candles from the People's Republic of China: Request for Comments on the Scope of the Antidumping Duty Order and the Impact on Scope Determinations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') has considered certain novelty candles (*i.e.*, candles in the shape of an identifiable object or with holiday–specific design both being discernable from multiple angles) outside the scope of the Order. *See Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China*, 51 Fed. Reg. 30686 (August 28, 1986) (''*Order*''). These exclusions were made in accordance with 19 C.F.R. § 351.225(k)(1) and past Department practices. However, given the extremely large number of scope determinations requested by outside parties, the Department now seeks comments from the interested parties on the best method to consider whether novelty candles should or should not be included within the scope of the *Order* given the extremely large number of scope determinations requested by outside parties.

DATES: Comments must be submitted no later than September 16, 2009.

ADDRESSES: Written comments (original and six copies) should be sent to the Secretary of Commerce; Attn: Alex Villanueva, Import Administration, APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva, Program Manager, AD/CVD Operations, Office 9, Import Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230, telephone: (202) 482–3208.

SUPPLEMENTARY INFORMATION:

Background

The regulations governing the Department's scope determinations are found at 19 C.F.R. § 351.225. On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the U.S. International Trade Commission (''ITC''). A determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order. *See* 19 C.F.R. § 351.225(k)(1).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the five additional factors set forth at 19 C.F.R. § 351.225(k)(2). These criteria are: (1) the physical characteristics of the merchandise; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; (4) the channels of trade in which the product is sold; and (5) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case–by-case basis after consideration of all evidence before the Department.

In past scope determinations under the *Order*, the Department has relied on the scope of the Petition, prior scope determinations and documents from the ITC as guidance. We have noted that in its Antidumping Petition on Behalf of the National Candle Association (''NCA''), dated September 4, 1985 (''Antidumping Petition''), the NCA requested that the investigation cover:

> {c}andles {which} are made from petroleum wax and contain fiber or paper–cored wicks. They are sold in the following shapes: tapers, spirals, and straight–sided dinner candles; rounds, columns, pillars; votives; and various wax–filled containers. These candles may be scented or unscented ... and are generally used by retail consumers in the home or yard for decorative or lighting purposes.

See Antidumping Petition at 7.

The Department adopted this scope language in its notice of initiation. This scope language carried forward without change through the preliminary and final determinations of sales at less than fair value and the eventual antidumping duty order:

> {c}ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper–cored wicks. They are sold in the following shapes: tapers, spirals, and straight–sided dinner candles; rounds, columns, pillars, votives; and various wax–filled containers.

See Petroleum Wax Candles from the People's Republic of China: Initiation of Antidumping Duty Investigation, 50 Fed. Reg. 39743 (September 30, 1985); *Petroleum Wax Candles from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 51 Fed. Reg. 6016 (February 19, 1986); *Petroleum Wax Candles from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 51 Fed. Reg. 25085 (July 10, 1986); and *Order*. However, while the ITC adopted a similar definition of the ''domestic like product'' subject to its determinations, it noted that the investigations did not include ''birthday, birthday numeral and figurine type candles.'' *See* Candles from the People's Republic of China: Determination of the Commission in Investigation No. 731–TA–282 (Final), Publication 1888 (August 1986) at 4, note 5, and A–2.

The ITC's statement regarding birthday, birthday numeral and figurine type candles was echoed in the Department's instructions to the U.S. Customs Service[1] issued in connection with a July 1987 scope determination concerning an exception from the Order for novelty candles (CBP Notice), which states:

> The Department of Commerce has determined that certain novelty candles, such as Christmas novelty candles, are not within the scope of the antidumping duty order on petroleum–wax candles from the People's Republic of China (PRC). Christmas novelty candles are candles specially designed for use only in connection with the Christmas holiday season. This use is clearly indicated by Christmas scenes and symbols depicted in the candle design. Other novelty candles not within the scope of the order include candles having scenes or symbols of other occasions (*e.g.*, religious holidays or special events) depicted in their designs, figurine candles, and candles shaped in the form of identifiable objects (*e.g.*, animals or numerals).

See CBP Notice.

In November 2001, the Department changed its practice on the issue of candle shapes. *See* Final Scope Ruling Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A–570–504); JC Penney Purchasing Corporation, (November 9, 2001) (''JC Penney''). In this ruling, the Department reviewed the

---

On July 28, 2006, the United States Customs Service since was renamed as the United States Bureau of Customs and Border Protection. *See* Homeland Security Act of 2002, Pub. L. 107-296, § 1502, 116 Stat. 2135, 2308-09 (2002); Reorganization Plan Modification for the Department of Homeland Security, H.R. Doc. No. 108-32, at 4 (2003).

text of the scope of the Order, beginning with the text of the first sentence of the scope which covers ''{c}ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper–cored wicks.'' *See Order*. The Department stated in JC Penney that: {t}he text following this broad inclusive sentence provides a list of shapes, which list is not modified by any express words of exclusivity. The result of our prior practice of excluding candles of a shape other than those listed was arguably inconsistent with the fact that such candles were scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper–cored wicks.' *See* JC Penney at 4–5, footnote 1. Furthermore, in JC Penney, the Department stated that:

> We now determine that this practice was incorrect because it had the effect of narrowing the broad coverage of the first sentence of the Order's scope. The list of shapes in the second sentence of the Order's scope does not provide a textual basis for such a narrowing of the coverage of the first sentence of the Order's scope. Accordingly, in order to give full effect to the first sentence of the inclusive language of the scope, the Department in this and future cases normally will evaluate whether candles of a shape not listed by the inclusive language of the Order's scope are scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper–cored wicks.

See JC Penney at 5, footnote 1. Since 2001, the Department has determined that if the candle is made from petroleum wax and has a fiber or paper–cored wick it falls within the scope of the Order regardless of shape unless the candle possesses the characteristics set out in the CBP Notice, in which case a candle falls within the Department's novelty candle exception and is not within the scope of the *Order*.

Issue of Concern

The Department is reconsidering the JC Penney methodology, given the large number of candles scope request submitted each year, many of which have claimed exclusion on the grounds that they are novelty candles. Since the JC Penney ruling in 2001, the Department has issued 596 scope determinations for this *Order*. Currently, there are 308 pending candles scope determinations. *See* Scope Requests submitted by Trade Associates Group, Ltd., dated June 11, 2009, and Sourcing International, LLC, dated June 25, 2009, July 28, 2009. The volume of requests in this *Order* is greater than any other antidumping duty order. It is evident that the methodology adopted in JC Penny has resulted in uncertainty as to what candles fall within the scope of the *Order*, because this methodology requires that the Department examine each individual candle in order to reach a determination as to whether it qualifies as a novelty candle. This methodology has resulted in parties submitting an extremely large number of scope requests, hindering the Department's ability to conduct a timely analysis of these requests.

Request for Comments

As a result of the uncertainty driving the growing number of requests for candles scope determinations and an evaluation of the resources needed to complete these analyses, the Department is requesting that interested parties, as defined by 19 U.S.C. § 1677(9), provide comments on whether it is proper to continue analyzing whether novelty candles are outside the scope of the *Order* pursuant to the JC Penney methodology.

The Department will consider all comments proposed by interested parties. However, we are proposing the following two options:

Option A

The Department would consider all candle shapes identified in the scope of the *Order, (i.e.*, tapers, spirals, and straight–sided dinner candles; rounds, columns, pillars, votives; and various wax–filled containers) to be *within* the scope of the *Order*, regardless of etchings, prints, moldings or other artistic or decorative enhancements including any holiday–related art. All other candle shapes would be considered outside the scope of the *Order*.

Option B

The Department would consider all candle shapes, including novelty candles, to be within the scope of the *Order* including those not in the shapes listed in the scope of the *Order*, as that is not an exhaustive list of shapes, but simply an illustrative list of common candle shapes.

The Department is not limiting its consideration to only these two options and welcomes all interested parties to submit comments and proposals for conducting the increasing number of requests for candle scope determinations. We also invite interested parties to consider the historical context in which the novelty exclusion was created and whether the basis for that exclusion should be reconsidered given the increasing number of requests for candle scope determinations.

The Department intends to issue a preliminary determination with respect to this issue 60 days after September 16, 2009. Parties will then be able to file a brief 30 days after the issuance of the preliminary determination and rebuttal briefs 10 days later. The Department intends to issue a final determination within 60 days after the receiving the comments to the draft response.

Pending Scope Determinations

Given the overwhelming number of scope requests, we will not issue a determination on the pending scope requests until we have completed our analysis of the comments submitted by interested parties.

Submission of Comments

Persons wishing to comment should file one signed original and six copies of each set of comments by the date specified above. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them. All comments responding to this notice will be a matter of public record and will be available for inspection and copying at Import Administration's Central Records Unit, Room 1117. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic form to accompany the required paper copies.

Comments filed in electronic form should be submitted either by e–mail to the Webmaster below, or on CD ROM, as comments submitted on diskette is likely to be damaged by postal radiation treatment. Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration Web site at the following address: http://www.ia.ita.doc.gov. Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482

0866, e–mail address: webmastersupport@ita.doc.gov.

Dated: August 14, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–20139 Filed 8–20–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ40

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS, has made a preliminary determination that the subject exempted fishing permit (EFP) application contains all the required information and warrants further consideration. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow commercial fishing vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before September 8, 2009.

ADDRESSES: Comments may be submitted by email to *NERO.EFP@noaa.gov*. Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on the SNE Flatfish Discard Mortality EFP.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Melissa Vasquez, Fishery Management Specialist, (978) 281–9166, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: An EFP is being requested for eight vessels participating in the Southern New England (SNE) Flatfish Discard Mortality Study conducted by the NOAA/University of Massachusetts Dartmouth School for Marine Science and Technology (SMAST) Cooperative Marine Education and Research program. The primary objective of this study is to assess the effects of different stressors on the mortality of flatfish discarded in the SNE and Mid-Atlantic trawl fisheries. The researchers would conduct field and lab observations of flatfish captured during regular commercial fishing operations for Reflex Action Mortality Predictors (RAMP) under different stressors to assess the discard mortality rates of five flatfish species: SNE yellowtail flounder; SNE winter flounder; summer flounder; northern windowpane flounder; and southern windowpane flounder. In addition, the applicants would use the results of their study to assess the use of RAMP in estimating the mortality of each species within the flatfish complex.

The study would be conducted aboard eight commercial fishing vessels in the SNE and Mid-Atlantic mixed trawl fishery beginning the date of issuance of the EFP and continuing for a full year. All vessels would utilize otter trawl gear with gear configuration and mesh size dictated by current fishery regulations. NOAA/University of Massachusetts technicians and/or commercial fishermen would collect 100 fish of each species per month, during regular commercial fishing operations, for a maximum catch of 6,000 fish over the course of the 12-month study (Table 1). Fish would be landed and transported live to the SMAST seawater lab facility for testing and would not be sold. The applicants have requested an exemption from NE multispecies possession restrictions for SNE yellowtail flounder, SNE winter flounder, and northern windowpane flounder, specified at §§ 648.86(g)(1), 648.86(n)(1), and 648.86(n)(2), respectively, in order to land the live specimens in excess of possession limits. The applicants have also requested an exemption from NE multispecies minimum fish sizes specified at § 648.83 and the summer flounder minimum fish size at § 648.103(a) in order to test a representative sample of the age composition of discarded flatfish.

TABLE 1: ESTIMATED SAMPLE SIZE

Species	#fish/month	#fish total
SNE Yellowtail Flounder	100	1200
SNE Winter Flounder	100	1200
Summer Flounder	100	1200
Northern Windowpane Flounder	100	1200
Southern Windowpane Flounder	100	1200

For the field-based portion of the study, technicians would observe a minimum of 100 fish of each species on commercial fishing trips for RAMP before they are discarded at-sea. The applicants would require a temporary exemption from the summer flounder commercial minimum fish size restriction at § 648.103(a), the NE multispecies minimum fish size restrictions at § 648.83, and the NE multispecies possession restrictions at §§ 648.86(g)(1), 648.86(n)(1), and 648.86(n)(2), for the time period when trained technicians or crew are sampling fish. To ensure that monthly sampling is not disrupted, the applicants have also requested vessels be exempt from the summer flounder closure specified at § 648.101(a) for the purposes of collecting the 100 live specimens of each species each month.

The applicants may request minor modifications and extensions to the EFP throughout the course of research. EFP modifications and extensions may be granted without further public notice if they are deemed essential to facilitate completion of the proposed research and result in only a minimal change in the scope or impacts of the initially approved EFP request.

In accordance with NAO Administrative Order 216–6, a Categorical Exclusion or other appropriate National Environmental Policy Act document would be completed prior to the issuance of the EFP. Further review and consultation may be necessary before a final determination is made to issue the EFP. After publication of this document in the **Federal Register**, the EFP, if approved, may become effective following the public comment period.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 17, 2009.

Kristen Koch,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–20096 Filed 8–20–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR02

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Whiting Committee and Advisory Panel in September, 2009 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Monday, September 14, 2009 at 10 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048: telephone: (508) 339–2200; fax: (508) 339–1040.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Oversight Committee and Advisory Panel will begin developing draft alternatives for Amendment 17, which would revise regulations for small mesh groundfish (whiting and red hake). Included in the amendment will be alternatives for annual catch limits (ACLs) and accountability measures (AMs), limited access, catch allocations, and possibly measures to minimize bycatch. A report from the Whiting PDT will be given. Other related issues may be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 18, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–20097 Filed 8–20–09; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a service previously furnished by such agencies.

DATES: *Effective Date:* 9/21/2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 6/19/2009 (74 FR 29187–29189) and 6/26/2009 (74 FR 30531–30532), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions and deletion to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN: 7510–00–NIB–0877—Binder, 3 D-Ring, 100% Recycled 1'' Black

NSN: 7510–00–NIB–0879—Binder, 3 D-Ring, 100% Recycled 2'' Black

NSN: 7510–00–NIB–0880—Binder, 3 D-Ring, 100% Recycled 3'' Black

NSN: 7510–00–NIB–0885—Binder, 3 D-Ring, 100% Recycled 1'' Dark Green

NSN: 7510–00–NIB–0887—Binder, 3 D-Ring, 100% Recycled 2'' Dark Green

NSN: 7510–00–NIB–0888—Binder, 3 D-Ring, 100% Recycled 3'' Dark Green

Coverage: A-List for the total Government requirement as aggregated by the General Services Administration.

NSN: 7510–00–NIB–0878—Binder, 3 D-Ring, 100% Recycled 1.5'' Black

NSN: 7510–00–NIB–0881—Binder, 3 D-Ring, 100% Recycled 1'' Blue

NSN: 7510–00–NIB–0882—Binder, 3 D-Ring, 100% Recycled 1.5'' Blue

NSN: 7510–00–NIB–0883—Binder, 3 D-Ring, 100% Recycled 2'' Blue

NSN: 7510–00–NIB–0884—Binder, 3 D-Ring, 100% Recycled 3'' Blue

NSN: 7510–00–NIB–0886—Binder, 3 D-Ring, 100% Recycled 1.5'' Dark Green

Coverage: B-List for the broad Government requirement as aggregated by the General Services Administration.

NPA: South Texas Lighthouse for the Blind, Corpus Christi, TX

Contracting Activity: Federal Acquisition

Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.

NSN: 6545–00–NIB–0088—Kit, Ambulance
NPA: Bosma Industries for the Blind, Inc., Indianapolis, IN
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC, HINES, IL.
Coverage: C-List for the total Department of Veterans Affairs requirement.

NSN: 6545–00–NIB–0091—Accelerate-OR JB Kit
NSN: 6545–00–NIB–0090—Accelerate-OR A Kit
NSN: 6545–00–NIB–0089—Accelerate-OR M Kit
NSN: 6545–00–NIB–0074—Accelerate-OR R Kit
NPA: Bosma Industries for the Blind, Inc., Indianapolis, IN
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC, HINES, IL.
Coverage: C-List for the total Department of Veterans Affairs requirement.

NSN: 7510–00–L98–0032—Tape, Pressure Sensitive, Package Sealing 110yd
NSN: 7510–00–L98–0033—Tape, Pressure Sensitive, Package Sealing 110yd
NSN: 7510–00–L98–0037—Tape, Pressure Sensitive, Package Sealing 110yd
NPA: Cincinnati Association for the Blind, Cincinnati, OH
Contracting Activity: Defense Logistics Agency, Defense Distribution Center, New Cumberland, PA.
Coverage: C-list for the total Defense Logistics Agency requirement.

NSN: 7530–01–418–1314—Folder, File, Classification
NPA: The Clovernook Center for the Blind, Cincinnati, OH
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FSS OFC SUP CTR—PAPER PRODUCTS, NEW YORK, NY.
Coverage: A-List for the total Government requirement as aggregated by the General Services Administration.

Services:

Service Type/Location: Acquisition Support Services, DCMA Headquarters, 6350 Walker Lane, Alexandria, VA.
NPA: Virginia Industries for the Blind, Charlottesville, VA.
Contracting Activity: Defense Contract Management Agency (DCMA), Alexandria, VA.

Service Type/Location: Grounds Maintenance Services, US Army Reserve Center at Perimeter Park, 7077 Perimeter Park Dr, Houston, TX.
NPA: On Our Own Services, Inc., Houston, TX.
Contracting Activity: Dept. of the Army, XR W6BB ACA Presidio of Monterey, CA.

Service Type/Location: Janitorial Services, Coast Guard Island, Alameda, CA.
NPA: Calidad Industries, Inc., Oakland, CA.
Contracting Activity: U.S. Coast Guard, MLC PacifiC (VPL), Alameda, CA.

Service Type/Location: Switchboard Services, Minot Air Force Base, 211 Missile Ave., Minot AFB, ND.
NPA: MVW Services, Inc., Minot, ND.
Contracting Activity: DEPT OF THE AIR FORCE, FA4528 5 CONS LGC, MINOT AFB, ND.

Deletion

On 6/26/2009 (74 FR 30531–30532), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletion from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service deleted from the Procurement List.

End of Certification

Accordingly, the following service is deleted from the Procurement List:

Service:

Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, 950 New Castle Road, Farrell, PA.
NPA: Unknown (No Performing Agency).
Contracting Activity: Dept of the Army, XR W40M NATL Region Contract OFC, Washington, DC.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. E9–20115 Filed 8–20–09; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a product previously furnished by such agencies.

Comments Must Be Received on or Before: September 21, 2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or to Submit Comments Contact: Barry S. Lineback, *Telephone:* (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

NSN: 6660–00–920–3722—Rain Gauge, 4''
NPA: Productive Alternatives, Inc., Fergus Falls, MN
Contracting Activity: Dept of Commerce, Office of the Secretary/NOAA, Kansas, MO.
Coverage: C-List for the requirements of the Dept of Commerce, Office of the Secretary/NOAA.

NSN: 6545–00–NSH–0032—Combat Lifesavers Kit
NPA: ServiceSource, Inc., Alexandria, VA
Contracting Activity: Dept of the Navy, Marine Corps Air Facility/Contracting Office.
Coverage: C-List for the requirements of the Dept of the Navy, Marine Corps Air Facility/Contracting Office.

Services

Service Type/Location: Base Supply Center, USDA, Headquarters, 1400 Independence Ave, SW., Washington, DC.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, NC.
Contracting Activity: Dept of Agriculture—USDA, Office of Operations, Washington, DC.

Service Type/Location: Janitorial and Grounds Maintenance Service, USDA–ARS, 2000 E. Allen Rd, Tucson, AZ.
NPA: Beacon Group SW, Inc., Tucson, AZ.
Contracting Activity: Dept Of Agriculture—USDA, Agricultural Research Service, PWA Area Procurement Office, Albany, CA.

Service Type/Locations: Custodial Services, Bradford Facility, 5000 Bradford Drive, Huntsville, AL.
Huntsville Warehouse, 151 Electronics Blvd and 351 Electronics Blvd, Huntsville, AL.
Wynn Facility, 106 Wynn Drive, Huntsville, AL.
Cheverly Warehouse, 6340 Columbia Park Road, Cheverly, MD.
Suffolk Facility, 5611 Columbia Pike, Alexandria, VA.
Dahlgren Facilities, 17211 Avenue D, Dahlgren, VA.
NPA: Huntsville Rehabilitation Foundation, Huntsville, AL.
Contracting Activity: Dept of Defense, Missile Defense Agency (MDA), Redstone Arsenal, AL.

Service Type/Location: Receptionist and Security Services, Lyng Service Center, USDA NRCS California State Office, 430 G. Street, # 4164, Davis, CA.
NPA: Pacific Coast Community Services, Richmond, CA.
Contracting Activity: Dept of Agriculture, Natural Resources Conservation Service, Soil Conservation Service, Davis, CA.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. If approved, the action may result in authorizing small entities to furnish the product to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with this product proposed for deletion from the Procurement List.

End of Certification

The following product is proposed for deletion from the Procurement List:

Product

NSN: 7530–00–731–5363—Paper, Tabulating Machine.
NPA: Tarrant County Association for the Blind, Fort Worth, TX.
Contracting Activity: GSA/FSS OFC SUP CTR—Paper Products, New York, NY.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. E9–20116 Filed 8–20–09; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–35]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09–35 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 12, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

AUG 06 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-35, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Brazil for defense articles and services estimated to cost $7 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick

Beth M. McCormick
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 09-35

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Brazil**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$3.0 billion
Other	$4.0 billion
TOTAL	$7.0 billion

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 28 F/A-18E Super Hornet Aircraft, 8 F/A-18F Super Hornet Aircraft, 72 F414-GE-400 installed engines, 4 F414-GE-400 spare engines, 36 AN/APG-79 Radar Systems, 36 M61A2 20mm Gun Systems, 36 AN/ALR-67(V)3 Radar Warning Receivers, 144 LAU-127 Launchers, 44 Joint Helmet Mounted Cueing Systems (JHMCS), 28 AIM-120C-7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), 28 AIM-9M SIDEWINDER Missiles, 60 GBU-31/32 Joint Direct Attack Munitions (JDAM), 36 AGM-154 Joint Standoff Weapons (JSOW), 10 AGM-88B HIGH-SPEED ANTIRADIATION Missiles (HARM), and 36 AN/ASQ-228 (V2) Advanced Targeting Forward-Looking Infrared (ATFLIR) Pods. Also included are 36 AN/ALQ-214 Radio Frequency Countermeasures. 40 AN/ALE-47 Electronic Warfare Countermeasures Systems, 112 AN/ALE-50 Towed Decoys, Joint Mission Planning System, support equipment, spare and repair parts, personnel training and training equipment, ferry and tanker support, flight test, software support, publications and technical documents, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistics and program support.**

(iv) **Military Department: Navy (SDH)**

*** as defined in Section 47(6) of the Arms Export Control Act.**

(v) **Prior Related Cases, if any: none**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress:** AUG 06 2009

POLICY JUSTIFICATION

Brazil – F/A-18E/F Super Hornet Aircraft

The Government of Brazil has requested proposals from several foreign suppliers, including the United States, to provide the next generation fighter for the Brazilian Air Force. In this "FX-2" competition, the Government of Brazil has yet to select the United States Navy-Boeing proposal. This notification is being made in advance of receipt of a letter of request so that, in the event that the US Navy-Boeing proposal is selected, the United States might move as quickly as possible to implement the sale. If the Government of Brazil selects the U.S. Navy-Boeing proposal, the Government of Brazil will request a possible sale of 28 F/A-18E Super Hornet Aircraft, 8 F/A-18F Super Hornet Aircraft, 72 F414-GE-400 installed engines, 4 F414-GE-400 spare engines, 36 AN/APG-79 Radar Systems, 36 M61A2 20mm Gun Systems, 36 AN/ALR-67(V)3 Radar Warning Receivers, 144 LAU-127 Launchers, 44 Joint Helmet Mounted Cueing Systems (JHMCS), 28 AIM-120C-7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), 28 AIM-9M SIDEWINDER Missiles, 60 GBU-31/32 Joint Direct Attack Munitions (JDAM), 36 AGM-154 Joint Standoff Weapons (JSOW), 10 AGM-88B HARM Missiles, and 36 AN/ASQ-228 (V2) Advanced Targeting Forward-Looking Infrared (ATFLIR) Pods. Also included are 36 AN/ALQ-214 Radio Frequency Countermeasures. 40 AN/ALE-47 Electronic Warfare Countermeasures Systems, 112 AN/ALE-50 Towed Decoys, Joint Mission Planning System, support equipment, spare and repair parts, personnel training and training equipment, ferry and tanker support, flight test, software support, publications and technical documents, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistics and program support. The estimated cost is $7.0 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be, an important force for political stability and economic progress in South America.

Brazil needs these aircraft to meet current and future threats. The proposed sale of F/A-18E/F aircraft will enhance Brazil's tactical aviation capabilities. An increase in capability will be accrued primarily due to the larger number of aircraft and the larger range and endurance of the F/A-18E/F. Brazil will have no difficulty absorbing these aircraft into its aircraft inventory.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be:

The Boeing Company	**St. Louis, Missouri**
General Electric Aircraft Engines	**Lynn, Massachusetts**
Northrup Grumman Corporation	**El Segundo, California**
Raytheon Corporation	**El Segundo, California**
Lockheed Martin	**Bethesda, Maryland**

There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will require approximately eight contractor representatives to provide technical and logistics support in Brazil for two years. U.S. Government and contractor representatives will also participate in program management and technical reviews for one-week intervals twice semi-annually.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-35

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The F/A-18E/F Super Hornet is a single- and two-seat, twin engine, multi-mission fighter/attack aircraft that can operate from either aircraft carriers or land bases. The F/A-18 fills a variety of roles: air superiority, fighter escort, suppression of enemy air defenses, reconnaissance, forward air control, close and deep air support, and day and night strike missions. The F/A-18E/F Weapon System is considered Secret.

a. The AN/APG-79 Active Electronically Scanned Array Radar System is classified Secret. The radar provides the F/A-18 aircraft with all-weather, multi-mission capability for performing air-to-air and air-to-ground targeting and attack. Air-to-air modes provide the capability for all-aspect target detection, long-range search and track, automatic target acquisition, and tracking of multiple targets. Air-to-surface attack modes provide high-resolution ground mapping navigation, weapon delivery, and sensor cueing. The system component hardware (Antenna, Transmitter, Radar Data Processor, and Power Supply) is Unclassified. The Receiver-Exciter hardware is Confidential. The radar Operational Flight Program (OFP) is classified Secret. Documentation provided with the AN/APG-79 radar set is classified Secret.

b. The AN/ALR-67(V)3 Electric Warfare Countermeasures Receiving Set is classified Confidential. The AN/ALR-67(V)3 provides the F/A-18F aircrew with radar threat warnings by detecting and evaluating friendly and hostile radar frequency threat emitters and providing identification and status information about the emitters to on-board Electronic Warfare (EW) equipment and the aircrew. The OFP and User Data Files (UDF) used in the AN/ALR-67(V)3 are classified Secret. Those software programs contain threat parametric data used to identify and establish priority of detected radar emitters.

c. The AN/ALE-47 Countermeasures Dispensing Systems is classified Secret. The AN/ALE-47 is a threat-adaptive dispensing system that dispenses chaff, flares, and expendable jammers for self-protection against airborne and ground-based Radio Frequency and Infrared threats. The AN/ALE-47 Programmer is classified Confidential. The OFP and Mission Data Files used in the AN/ALE-47 are classified Secret. Those software programs contain algorithms used to calculate the best defense against specific threats.

d. The AN/APX-111 Combined Interrogator/Transponder (CIT) Identification Friend or Foe (IFF) System is classified Secret. The requirement is to upgrade Brazil's Combined Interrogator Transponder (CIT) AN/APX-111 (V) IFF system software to implement Mode Select (Mode S) capabilities. Beginning in early 2005 EUROCONTROL mandated the civil community in Europe to transition to a Mode S only system and for all aircraft to be compliant by 2009. The Mode S Beacon System is a combined data link and Secondary Surveillance Radar (SSR) system that was standardized in 1985 by the International Civil Aviation Organization (ICAO). Mode S provides air surveillance using a data link with a permanent unique aircraft address. Selective Interrogation provides higher data integrity, reduced RF interference levels, increased air traffic capacity, and adds air-to-ground data link.

e. The Solid State Recorder (SSR) capabilities will add Electro-optical/Infrared (EO/IR) Imagery to the existing Cockpit Video Recording System (CVRS). Use of SSR technology will overcome numerous obsolescence issues with the existing CVRS, provides greater memory capacity, and allows for future network centric operations such as real-time/near-real time imagery in/out of cockpit.

f. The Joint Helmet Mounted Cueing System (JHMCS) is a modified HGU-55/P helmet that incorporates a visor-projected Heads-Up Display (HUD) to cue weapons and aircraft sensors to air and ground targets. In close combat, a pilot must currently align the aircraft to shoot at a target. JHMCS allows the pilot to simply look at a target to shoot. This system projects visual targeting and aircraft performance information on the back of the helmet's visor, enabling the pilot to monitor this information without interrupting his field of view through the cockpit canopy, the system uses a magnetic transmitter unit fixed to the pilot's seat and a magnetic field probe mounted on the helmet to define helmet pointing positioning. A Helmet Vehicle Interface (HVI) interacts with the aircraft system bus to provide signal generation for the helmet display. This provides significant improvement for close combat targeting and engagement. Hardware is Unclassified; technical data and documents are classified up to Secret.

g. The AN/AAQ-28 Litening Targeting Pod is classified Secret. Litening is a targeting pod integrated and mounted externally to the aircraft. The targeting pod contains a high-resolution, forward-looking infrared sensor (FLIR) that displays an infrared image of the target to the aircrew; it has a wide field of view search capability

and a narrow field of view acquisition/targeting capability of battlefield-sized targets. The pod contains a charged coupled device (CCD-TV) camera used to obtain target imagery in the visible portion of the electromagnetic spectrum. An on-gimbal inertial navigation sensor has established line-of-sight and automatic bore sighting capability. The pod is equipped with a laser designator for precise delivery of laser-guided munitions, a laser rangefinder provides information for various avionics systems, for example, navigation updates, weapon deliveries and target updates. The targeting pod includes an automatic target tracker to provide fully automatic stabilized target tracking at altitudes, airspeeds and slant ranges consistent with tactical weapons delivery maneuvers. These features simplify the functions of target detection and recognition, and permit attack of targets with precision-guided weapons on a single pass.

h. The Joint Mission Planning System (JMPS) is Secret. JMPS will provide mission planning capability for support of military aviation operations. It will also provide support for unit-level mission planning for all phases of military flight operations and have the capability to provide necessary mission data for the aircrew. JMPS will support the downloading of data to electronics data transfer devices for transfer to aircraft and weapon systems. A JMPS for a specific aircraft type will consist of basic planning tools called the Joint Mission Planning Environment (JMPE) mated with a Unique Planning Component (UPC) provided by the aircraft program. In addition, UPCs will be required for specific weapons, communication devices, and moving map displays. The JMPS will be tailored to the specific releasable configuration for the F/A-18 Super Hornet.

i. The AIM-9M SIDEWINDER Missile is classified Secret. AIM-9M Sidewinder is a launch and leave, air combat missile that uses passive infrared (IR) energy for acquisition and tracking, which can be employed in near beyond visual range (NBVR) and within visual range (WVR) arenas. It has high off-boresight capability for use with the Joint Helmet Mounted Cueing System (JHMCS). The AIM-9M has a highly agile airframe with a fifth-generation seeker and thrust vectoring control provide unprecedented performance.

j. The AGM-154C Joint Standoff Weapon (JSOW) is classified Secret. AGM-154C (Formerly Advanced Interdiction Weapon System) is intended to provide a low cost, highly lethal glide weapon with a standoff capability. JSOW family of kinematically efficient, air-to-surface glide weapons, in the 1,000-lb class, provides standoff capabilities from 15 nautical miles (low altitude launch) to 40 nautical miles (high altitude launch). The JSOW will be used against a variety of land and sea targets and will operate from ranges outside enemy point defenses. The JSOW is a launch and leave weapon that employs a tightly coupled Global Position System (GPS)/Inertial Navigation System (INS), and is capable of day/night and adverse weather operations. The JSOW uses inertial and global positioning system for midcourse navigation and imaging infrared and data link for terminal homing. The JSOW is just over 13 feet in

length and weighs between 1000-1500 pounds. Extra flexibility has been engineered into the AGM-154C by its modular design, which allows several different sub munitions, unitary warheads, or non-lethal payloads to be carried. The JSOW will be delivered in three variants, each of which uses a common air vehicle, or truck, while substituting various payloads.

k. The GBU-31/32 Joint Direct Attack Munition (JDAM) is classified Secret. The JDAM is a tail kit that converts existing unguided free fall bombs into accurate, adverse weather "smart" munitions. With the addition of a new tail section that contains an inertial navigational system and a global positioning system guidance control unit, JDAM improves accuracy of unguided, general purpose bombs in any weather condition. JDAM is a guided air-to-surface weapon that uses either the 2,000-pound BLU-109/MK 84, the 1,000-pound BLU-110/MK 83 or the 500-pound BLU-111 MK 82 warhead as the payload. JDAM enables employment of accurate air-to-surface weapons against high priority fixed and relocatable targets from fighter and bomber aircraft. Guidance is facilitated through a tail control system and a GPS-aided INS. The navigation system is initialized by transfer alignment from the aircraft that provides position and velocity vectors from the aircraft systems. JDAM can be launched from a very low to very high altitudes in a dive, toss or loft and in straight and level flight with an on-axis or off-axis delivery. JDAM enables multiple weapons to be directed against single or multiple targets on a single pass.

l. The AGM-88 HIGH-SPEED ANTIRADIATION Missile (HARM) is a supersonic air-to-surface tactical missile designed to seek and destroy enemy radar-equipped air defense systems. The AGM-88 can detect, attack and destroy a target with minimum aircrew input. Guidance is provided through reception of signals emitted from a ground-based threat radar. It has the capability of discriminating a single target from a number of emitters in the environment. The proportional guidance system that homes in on enemy radar emissions has a fixed antenna and seeker head in the missile nose. A smokeless, solid-propellant, dual-thrust rocket motor propels the missile. The weapon system has the capability of detecting, acquiring, displaying, and selecting a radiating threat and launching a missile or missiles. The HARM Missile receives target parameters from the launch aircraft prior to launch. The HARM Missile uses these parameters and relevant attitude data to process incoming RF energy to acquire and guide the HARM Missile to the desired target. The HARM missile has a terminal homing capability that provides a launch and leave capability for the launch aircraft. Additional unique features include the high speed, low smoke, rocket motor and seeker sensitivity that enable the missile to easily attack sidelobes and backlobes of an emitter.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities.

[FR Doc. E9–20004 Filed 8–20–09; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–33]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09–33 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 12, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

AUG 0 3 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-33, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Hashemite Kingdom of Jordan for defense articles and services estimated to cost $131 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 09-33

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended (U)

(i) **Prospective Purchaser: Jordan**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 94 million
Other	$ 37 million
TOTAL	$131 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 85 AIM-120C-7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), 6 120C Captive Air Training Missiles, missile containers, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support.**

(iv) **Military Department: Air Force (YAC)**

(v) **Prior Related Cases, if any: FMS case YJD-$14M-15Apr05**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See annex attached**

(viii) **Date Report Delivered to Congress:** AUG 0 3 2009

* **as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Jordan – AIM-120C-7 AMRAAM Missiles

The Government of Jordan has requested a possible sale of 85 AIM-120C-7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), 6 120C Captive Air Training Missiles, missile containers, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government (USG) and contractor engineering, technical and logistics support services, and other related elements of logistical and program support. The estimated cost is $131 million.

The proposed sale will enhance the foreign policy and national security objectives of the United States by improving the security of a key regional partner who has proven to be a vital force for political stability and peace in the Middle East.

The proposed sale will improve Jordan's capability to meet current and future threats of enemy air-to-air weapons. Jordan will use the enhanced capability as a deterrent to regional threats and to strengthen its homeland defense. Jordan will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be the Raytheon Corporation of Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require bi-annual trips to Jordan involving up to six (6) U.S. Government and four (4) contractor representatives for one-week intervals for program management reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-33

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AIM-120C-7 Advanced Medium Range Air-to-Air Missile (AMRAAM) is a new generation air-to-air missile. The hardware, including the missile guidance section, is classified Confidential. State-of-the-art technology is used in the missile to provide it with unique beyond-visual-range capability. Significant AIM-120C-7 features include a target detection device with embedded electronic countermeasures, an electronics unit within the guidance section that performs all radar signal processing, mid-course and terminal guidance, flight control, target detection, and warhead burst point determination. Anti-tampering security measures have been incorporated to prevent exploitation of the AMRAAM software.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E9–20005 Filed 8–20–09; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–45]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09–45 with attached transmittal and policy justification.

Dated: August 12, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

AUG 06 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-45, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to The Netherlands for defense articles and services estimated to cost $181 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick

Beth M. McCormick
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

Same ltr to:

House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations

Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations

Transmittal No. 09-45

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
Of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: The Netherlands**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 123 million
Other	$ 58 million
TOTAL	$ 181 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: modification kits to upgrade 29 AH-64D APACHE Block I Helicopters to Block II configuration, support equipment, spare and repair parts, tools and test equipment, personnel training and training equipment, publications and technical documentation, engineering change proposals, contractor technical and logistics personnel services, and other related elements of logistics support.**

(iv) **Military Department: Army (WES)**

(v) **Prior Related Cases:**
FMS Case VXC - $688 million – 24 May 95
FMS Case WBW -$108 million – 19 Dec 03

(vi) **Sales Commissions, Fee, etc. Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or defense Services to be Sold: See Attached Annex.**

(viii) **Date Report Delivered to Congress:** AUG 06 2009

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

The Netherlands – Upgrade AH-64D APACHE Block I Helicopters to Block II

The Government of The Netherlands has requested a possible sale of modification kits to upgrade its 29 AH-64D APACHE Block I Helicopters to Block II configuration, support equipment, spare and repair parts, tools and test equipment, personnel training and training equipment, publications and technical documentation, engineering change proposals, contractor technical and logistics personnel services, and other related elements of logistics support. The estimated cost is $181 million.

This proposed sale contributes to the foreign policy and national security objectives of the U.S. by improving the military capabilities of The Netherlands and enhancing standardization and interoperability with U.S. forces. The Netherlands is a NATO ally and an active U.S. partner in Overseas Contingency Operations in both Iraq and Afghanistan.

The Netherlands needs these upgrades to enhance its AH-64 fleet capabilities. Having the same aircraft configuration as the U.S. would greatly contribute to its military capability, making it a more capable and sustainable coalition force to support Overseas Contingency Operations. The Netherlands has the ability to use and maintain these helicopters as evidenced by their operating previous AH-64 configurations. The Netherlands, which already has the AH-64 APACHE in its inventory, will have no difficulty absorbing and utilizing these enhanced helicopters into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Boeing Corporation of Mesa, Arizona. There are offset agreements proposed in connection with this sale.

Implementation of this proposed sale will require four contractor representatives in The Netherlands to conducting training for a period of two weeks.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. E9–20006 Filed 8–20–09; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–49]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09–49 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 12, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

AUG 0 6 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-49, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Thailand for defense articles and services estimated to cost $150 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick

Beth M. McCormick
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 09-49

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Thailand**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$100 million
Other	$ 50 million
TOTAL	$150 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 3 UH-60L BLACK HAWK helicopters with 6 T-700-GE-701D engines with C controls, AN/APX 100 (V) Identification Friend or Foe Mark XII Transponder Set or suitable substitute/commercial equivalent, warranties, internal hoist kits, spare and repair parts, tools and support equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering and technical support services, and other related elements of logistics support.**

(iv) **Military Department: Army (UAB)**

(v) **Prior Related Cases, if any:**
FMS case WEB-$19.5M–20Nov00
FMS case WEM-$9.4M–9Oct01
FMS case WES-$24.5M–3Oct02
FMS case WEZ-$25.3M–14Oct03
FMS case JDG-$7.1M–20Oct00

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress:** AUG 06 2009

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Thailand – UH-60L BLACK HAWK Helicopters

The Government of Thailand has requested a possible sale of 3 UH-60L BLACK HAWK helicopters with 6 T-700-GE-701D engines with C controls, AN/APX 100 (V) Identification Friend or Foe Mark XII Transponder Set or suitable substitute/commercial equivalent, warranty, internal hoist kits, spare and repair parts, tools and support equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering and technical support services and other related elements of logistics support. The estimated cost is $150 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a major non-NATO ally.

Thailand needs these helicopters to fulfill its strategic commitments for search and rescue and self-defense within the region without being dependent upon assistance from other countries. This proposed sale will upgrade its air mobility capability and provide for the defense of vital installations and close air support for ground forces. Thailand, which already has UH-60s in its inventory, will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Sikorsky Aircraft Corporation of Stratford, Connecticut. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of one contractor representative to Thailand for two years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-49

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The UH-60L BLACK HAWK weapon system contains communications and identification equipment, navigation equipment, displays and sensors. The aircraft itself does not contain sensitive technology. The highest level of classified information required to be released for training, operation, and maintenance of the BLACK HAWK helicopter is Confidential. The highest level that could be revealed through reverse engineering or testing of the end item is Confidential.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

BILLING CODE 5001–06–M
[FR Doc. E9–20019 Filed 8–20–09; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–52]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09–52 with attached transmittal, policy justification, and sensitivity of technology.

Dated: August 12, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

AUG 0 6 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-52, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to the Republic of Korea for defense articles and services estimated to cost $41 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick

Beth M. McCormick
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Transmittal No. 09-52

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Republic of Korea**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 38 million
Other	$ 3 million
TOTAL	$ 41 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 55 All-Up-Round AIM-9X SIDEWINDER Missiles, 12 AIM-9X SIDEWINDER Captive Air Training Missiles (CATMs), 2 AIM-9X CATM Missile Guidance Units, missile containers, missile modifications, test and support equipment, spare and repair parts, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related logistics support.**

(iv) **Military Department: Navy (AJW)**

(v) **Prior Related Cases, if any:**
FMS case AIL-$35M-01Jul02
FMS case AJR-$42M-08Nov07

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress:** AUG 06 2009

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Republic of Korea – AIM-9X SIDEWINDER Missiles

The Republic of Korea (ROK) has requested a possible sale of 55 All-Up-Round AIM-9X SIDEWINDER Missiles, 12 AIM-9X SIDEWINDER Captive Air Training Missiles (CATMs), 2 AIM-9X CATM Missile Guidance Units, missile containers, missile modifications, test and support equipment, spare and repair parts, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related logistics support. The estimated cost is $41 million.

The Republic of Korea is one of the major political and economic powers in East Asia and the Western Pacific and a key partner of the United States in ensuring peace and stability in that region. It is vital to the U.S. national interest to assist our ally in developing and maintaining a strong and ready self-defense capability, which will contribute to an acceptable military balance in the area. This proposed sale is consistent with those objectives.

The Republic of Korea needs these missiles to enhance the ROK Air Force's current air-to-air intercept capability to equal capabilities within their region of operations. Korea will have no difficulty absorbing these additional missiles into its armed forces

The principal contractor will be Raytheon Missile Systems Company in Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Korea.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-52

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vii

(vii) **Sensitivity of Technology:**

1. The AIM-9X represents a substantial increase in missile acquisition and kinematics performance over previous AIM-9 variants. The missile includes a high off-bore-sight seeker, enhanced countermeasure rejection capability, low drag/high angle of attack airframe and the ability to integrate the Joint Helmet Mounted Cueing System. The software algorithms are the most sensitive portions of the AIM-9X missile. The software continues to be modified during the testing phase in order to improve its counter-countermeasures capabilities. No software source code or algorithms will be released. Sensitive and/or classified (up to Secret) elements of the AIM-9X missiles include equipment/hardware, and software, and classified portions of operational performance. Maintenance training documentation is unclassified up to and including missile sectionalization training.

2. The external view of the AIM-9X SIDEWINDER missile is Unclassified. The seeker/guidance control section, and target detector contain sensitive state-of-the-art technology and are classified Confidential. Performance and operating logics of the counter-countermeasures circuits, manuals, and technical documents are classified Secret. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters and similar critical information.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

BILLING CODE 5001–06–M
[FR Doc. E9–20018 Filed 8–20–09; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–42]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09–42 with attached transmittal, policy justification, and sensitivy of technology.

Dated: August 12, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

AUG 4 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-42, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the United Arab Emirates for defense articles and services estimated to cost $526 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick

Beth M. McCormick
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 09-42

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser:** United Arab Emirates

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 36 million
Other	$ 490 million
TOTAL	$ 526 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 362 AGM-114N3 HELLFIRE Missiles, 15 AAR-57 Common Missile Warning Systems (CMWS), 21 AN/APR-39A(V)4 Radar Warning Receivers, 8 each AN/APX-118 Transponders, 19 AN/PRC-117 Radios, 15 AN/ASN-128D Doppler Radars, 6 AN/ARC-231 Radios, 15 Data Transfer Modules/Cartridges. Also included are engineering and installation, transportation, engineering change proposals, depot maintenance, communications equipment, repair and return, support equipment, spare and repair parts, publications technical documentation, personnel training and training equipment, contractor technical and logistics support services, and other related support elements.

(iv) **Military Department:** Army (ZUK and ZUL)

(v) **Prior Related Cases, if any:**
FMS Case ZUE-$1.5B–20Aug07
FMS Case UDN-$743M–05Dec05
FMS Case UDE-$123M–06Jan00
FMS Case ZUF-$149M–31Dec08

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** None

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** AUG 4 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates - AGM-114N3 HELLFIRE Missiles, Aircraft Survivability Equipment (ASE), Communications Equipment, and Other Related Support

The Government of the United Arab Emirates has requested a possible sale of 362 AGM-114N3 HELLFIRE Missiles, 15 AAR-57 Common Missile Warning Systems (CMWS), 21 AN/APR-39A(V)4 Radar Warning Receivers, 8 each AN/APX-118 Transponders, 19 AN/PRC-117 Radios, 15 AN/ASN-128D Doppler Radars, 6 AN/ARC-231 Radios, 15 Data Transfer Modules/Cartridges. Also included are engineering and installation, transportation, engineering change proposals, depot maintenance, communications equipment, repair and return, support equipment, spare and repair parts, publications and technical documentation, personnel training and training equipment, contractor technical and logistics support services, and other related support elements. The estimated cost is $526 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale of the weapons will allow the United Arab Emirates to deploy aircraft to materially assist the U.S. in overseas contingency operations. The support equipment will strengthen the effectiveness and interoperability of a potential coalition partner, reduce the dependence on U.S. forces in the region, and enhance any coalition operations the U.S. may undertake. The United Arab Emirates will have no difficulty absorbing this support into its armed forces.

The proposed sale of this weapon system will not alter the basic military balance in the region.

The principal contractors will be:

Science and Engineering Services, Inc (SES-I)	**Columbia, MD**
British Aerospace Engineering (BAE)	**Rockville, MD**
L3 Corporation	**Canton, MA**
Boeing Aircraft Corporation	**Mesa, AZ**
Lockheed Martin Corporation	**Orlando, FL**
Northrop Grumman	**Baltimore, MD**
Lockheed Martin Systems Integration	**Owego, NY**

There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the UAE.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-42

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AGM-114N3 Hellfire Missile is a precision-strike semi-active laser (SAL)-guided HELLFIRE II missile system that defeats advanced armor and urban point targets in the presence of severe electro-optical countermeasures, with minimal collateral damage. It can be launched from multiple air, sea, and ground platforms, autonomously or with remote designation. HELLFIRE II is Secret, based upon the software. The highest level of classified information that could be disclosed by a proposed sale or by testing of the end item is Secret; the highest level that must be disclosed for production, maintenance, or training is Confidential.

2. The AN/APR-39A(V)4 Radar Detecting Set (RDS) is a lightweight radar receiver for general aircraft application--AH-1F, AH-64A, CH-47D, OH-58C/D, UH-1H/V, UH-60A/L. The system provides warning of radar directed threats to allow appropriate evasive maneuvers and deployment of chaff. The system has the capability of detecting all pulse radar normally associated with hostile surface-to-air missiles, airborne intercepts and anti-aircraft weapon systems. The system has 10 individually housed components consisting of one control, one indicator, one comparator, two receivers, two left spiral antennas, two right spiral antennas and one blade antenna. Hardware is classified Confidential when programmed with U.S. threat data; releasable technical manuals for operation and maintenance are classified Confidential; releasable technical data (technical performance) is classified Secret.

3. The AN/ARC-231 Receiver/Transmitter, RT-1808A is an airborne Very High Frequency/Ultra High Frequency (VHF/UHF) Line-of-Sight with frequency agile modes, UHF Satellite Communications (SATCOM), and Demand Assigned Multiple Access (DAMA) Radio System. The ARC-231 provides airborne, multi-band, multi-mission, secure anti-jam voice, data and imagery network capable communications in a compact radio set. The AN/ARC-231 is classified as a Controlled Cryptographic Item (CCI); however, depending upon the software load, this radio may be classified as Secret.

4. The AN/AAR-57 Common Missile Warning System is the detection component of a suite of countermeasures being developed jointly to increase survivability of current generation combat, airlift and special operations aircraft against the threat posed by infrared guided missiles. The Electronic Control Unit (ECU) controls other Line Replaceable Units, provides countermeasures selection and initiation, controls built-in-test (BIT), and provides the platform interface. The Electro-Optic Missile Sensors (EOMS, baseline four for ATIRCM and six for CMWS) passively detect the presence of energy within a specific band of interest, and transmit information to the ECU. Hardware and releasable technical information for operations and maintenance is classified Secret.

5. The AN/APX-118 Common Transponder identifies aircraft and ships as friendly forces by responding to interrogations from ground-based or airborne Identification Friend or Foe (IFF) systems. The transponders, installed on aircraft and naval vessels, establish the identity of friendly forces. Those that do not identify themselves as friendly are considered threats. The US Army uses the common transponder on submarines, surface ships, fixed-wing aircraft and helicopters. The AN/APX-118 replaces outdated IFF transponders with digital technology, which is designed to improve the reliability and maintainability of aging systems. Hardware and releasable technical information for operations and maintenance is classified Secret.

6. The AN/ASN-128D Doppler Radars are self-contained airborne navigational sets which determine the three orthogonal components of aircraft velocity from measurements of the Doppler frequency shift and compute present position, bearing, time, and distance to selected destinations. The pilot, by reading the digital display, is able to directly observe present position, distance, bearing, and time to fly to the next destination. All AN/ASN-128 systems allow one to enter up to 100 destinations in either LAT/LONG or MGRS format. The AN/ASN-128D can operate in Combined Doppler/GPS navigation mode when Doppler data and GPS present position are combined to position data at the rate of the Doppler Radar, and with the accuracy of Global Positioning Systems. Hardware and releasable technical information for operations and maintenance is classified Secret.

7. The Data Transfer Cartridge and Card provide a means to program information directly from the Commander's computer to the ASN-128 Doppler rather than having to individually program the systems. This allows less time in programming and preparing for a mission and more time spent actually performing the mission. Hardware and releasable technical information for operations and maintenance is classified Secret.

8. The AN/PRC-117 Multiband Manpack Radio, or Multiband Multi Mission Radio (MBMMR), is a man-portable, tactical software-defined combat-net radio covering the 30-512 MHz frequency range and employing Type 1 Crypto capability. The designation AN/PRC translates to Army/Navy Portable Radio used for two-way Communications, according to Joint Electronics Type Designation System guidelines. Hardware and releasable technical information for operations and maintenance is classified Secret.

9. If a technologically advanced adversary were to obtain knowledge of the specific hardware in the proposed sale, the information could be used to develop countermeasures which might reduce weapons system effectiveness or be used in the development of a system with similar or advanced capabilities.

BILLING CODE 5001–06–M
[FR Doc. E9–20012 Filed 8–20–09; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE BILLING

Office of the Secretary

[Transmittal Nos. 09–40]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09–40 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 12, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

AUG 6 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-40, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Saudi Arabia for defense articles and services estimated to cost $1.5 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick

Beth M. McCormick
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 09-40

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Kingdom of Saudi Arabia**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ .150 billion
Other	$1.350 billion
TOTAL	$1.500 billion

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: A two-phased approach for the Communication Navigation and Surveillance/Air Traffic Management (CNS/ATM) upgrades of the communication and navigation systems for the Royal Saudi Air Force's fleet of thirteen (13) RE-3, KE-3, and E-3 aircraft. Phase 1 will include Global Positioning System/Inertial Navigation Systems (GINS), 8.33 kHz Very High Frequency (VHF) radios, Traffic Collision Avoidance Systems (TCAS), Mode S Transponders, Mode 4/5 Identification Friend or Foe (IFF) Encryption, High Frequency (HF) radio replacements, Multifunctional Information Display Systems (MIDS) for Link 16 operations, Have Quick II radios, Satellite Communications (SATCOM) and Common Secure Voice (CSV) encryptions. Phase 2 will include digital flight deck instrumentation and displays, flight director system/autopilot, flight management system, cockpit data line message and combat situational awareness information. Also included are spare and repair parts, support and test equipment, publication and technical documentation, personnel training and training equipment, personnel support and test equipment to include flight simulators, U.S. government and contractor engineering support, technical and logistics support services, and other related elements of logistical and program support.**

*** as defined in Section 47(6) of the Arms Export Control Act.**

(iv) **Military Department: Air Force (QAT)**

(v) **Prior Related Cases, if any: FMS Case SJA-$3.2B-Jun 82**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.**

(viii) **Date Report Delivered to Congress:** AUG 6 2009

POLICY JUSTIFICATION

Saudi Arabia – Communication and Navigation Surveillance/Air Traffic Management (CNS/ATM) Upgrades

The Government of Saudi Arabia has requested a possible sale of a two-phased approach for the Communication Navigation and Surveillance/Air Traffic Management (CNS/ATM) upgrades of the communication and navigation systems for the Royal Saudi Air Force's fleet of thirteen (13) RE-3, KE-3, and E-3 aircraft. Phase 1 will include Global Positioning System/Inertial Navigation Systems (GINS), 8.33 kHz Very High Frequency (VHF) radios, Traffic Collision Avoidance Systems (TCAS), Mode S Transponders, Mode 4/5 Identification Friend or Foe (IFF) Encryption, High Frequency (HF) radio replacements, Multifunctional Information Display Systems (MIDS) for Link 16 operations, Have Quick II radios, Satellite Communications (SATCOM) and Common Secure Voice (CSV) encryptions. Phase 2 will include digital flight deck instrumentation and displays, flight director system/autopilot, flight management system, cockpit data line message and combat situational awareness information. Also included are spare and repair parts, support and test equipment, publication and technical documentation, personnel training and training equipment, personnel support and test equipment to include flight simulators, U.S. government and contractor engineering support, technical and logistics support services, and other related elements of logistical and program support. The estimated cost is $1.5 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed upgrade will enable the Royal Saudi Air Force (RSAF) to sustain its current capability, maintain interoperability with the USAF and other coalition forces, and provide flexibility options for future growth. The upgrade will enhance the RSAF's ability to use a common architecture for efficiently communicating the gathered electronic data, within the RSAF and with other regional coalition forces. Saudi Arabia will have no difficulty absorbing these additional capabilities.

A U.S. prime contractor will be chosen after a competitive source selection. There are no known offset agreements in connection with this proposed sale.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

Implementation of this proposed sale will require temporary assignment of additional U.S. Government and contractor representatives in Saudi Arabia during the implementation phase of the upgrades. Additionally, six contractor representatives will be required on a full-time basis to provide technical assistance during the integration of the systems into the aircraft. This program will require up to six U.S. government and four contractor representatives to participate in program and technical reviews in Saudi Arabia for a period of approximately six weeks per year.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-40

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Communication Navigation Surveillance/Air Traffic Management (CNS/ATM) upgrade and its support elements will update late 60-70's technology with off-the-shelf newer equipment and software to resolve supportability problems and add capabilities to foster interoperability in support of coalition operations and joint training exercises with the USAF and other GCC countries. The modernized navigation system performs the same basic function as the older technology, but with the added benefits of greater speed, sensitivity, capacity, accuracy, and level of automation resulting from the use of current technology equipment. None of the technology, such as receivers, processor boards, etc. could be re-used in another application.

2. Sensitive elements include the Multifunctional Information Distribution System (MIDS) COMSEC device that provides improved situational awareness. The MIDS provides Link 16 data link networking with other Link 16 capable aircraft, command, and control systems. The MIDS shares a number of components with the MIDS terminal secure communications systems, search and locations system, signal processing systems, and databases. Classified elements include U.S. Government-provided secure communications equipment and keying material. Detailed system design information and software source code will not be provided to Saudi Arabia.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of systems with similar or advance capabilities.

[FR Doc. E9–20011 Filed 8–20–09; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–43]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09–43 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 12, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

AUG 6 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-43, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Egypt for defense articles and services estimated to cost $308 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick

Beth M. McCormick
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**
4. **Regional Balance (Classified Document Provided Under Separate Cover)**

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Egypt**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$120 million
Other	$188 million
TOTAL	$308 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 6 CH-47D CHINOOK Helicopters, 16 T55-GA-714A engines, 8 AN/APR-39A(V)1 Radar Signal Detecting Sets with Mission Data Sets, 8 AN/APX-117 Transponders with TS-4530 Interrogator/Transponder Test Sets, 8 AN/ARC-220 (RT-1749) High Frequency Aircraft Communication Systems, flight and radar signal simulators, 3 M978A4 HEMTT Fuel Tanker trucks, 2 Fork Lift trucks, repair and return, transportation, site survey, construction and facilities, spare and repair parts, support equipment, personnel training and training equipment, publications and technical documentation, U.S. Government and contractor technical support, and other related elements of program support.**

(iv) **Military Department: Army (VBZ)**

(v) **Prior Related Cases, if any:**
FMS case JBK-$113M-22Jan98
FMS case JBN-$114M-06Dec00
FMS case UUW-$147M-24Jun02
FMS case UWN-$103M-09Sep04

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.**

(viii) **Date Report Delivered to Congress:** AUG 6 2009

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Egypt – CH-47D CHINOOK Helicopters

The Government of Egypt has requested a possible sale of 6 CH-47D CHINOOK Helicopters, 16 T55-GA-714A engines, 8 AN/APR-39A(V)1 Radar Signal Detecting Sets with Mission Data Sets, 8 AN/APX-117 Transponders with TS-4530 Interrogator/ Transponder Test Sets, 8 AN/ARC-220 (RT-1749) High Frequency Aircraft Communication Systems, flight and radar signal simulators, 3 M978A4 HEMTT Fuel Tanker trucks, 2 Fork Lift trucks, repair and return, transportation, site survey, construction and facilities, spare and repair parts, support equipment, personnel training and training equipment, publications and technical documentation, U.S. Government and contractor technical support, and other related elements of program support. The estimated cost is $308 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Egypt will use the CH-47D in support of its armed forces, disaster relief efforts, and joint exercises with U.S. forces in the region. Egypt will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be The Boeing Helicopter Company in Philadelphia, PA. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of one U.S. contractor field service representative in Egypt to provide support for a period of one year with an option for two additional years. Four additional contractor representatives and one U.S. Government representative will be required for quality assurance roles for aircraft delivery for a period of one week.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-43

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The CH-47D CHINOOK Helicopter includes the following sensitive and/or classified (up to and including Secret) components:

a. The AN/APR-39A(V)1 Radar Signal Detecting Set is a system, that provides warning of a radar directed air defense threat and includes appropriate countermeasures. This is the 1553 databus compatible configuration. The hardware is classified Confidential when programmed with U.S. threat data; releasable technical manuals for operation and maintenance are classified Confidential; and releasable technical data (technical performance) is classified Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or could be used in the development of a system with similar or advanced capabilities.

[FR Doc. E9–20009 Filed 8–20–09; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–48]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09–48 with attached transmittal and policy justification.

Dated: August 12, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

AUG 06 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-48, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to The Netherlands for defense articles and services estimated to cost $133 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick

Beth M. McCormick
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 09-48

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: The Netherlands**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 2 million
Other	$131 million
TOTAL	$133 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: continuation of a Continental United States (CONUS)-based Royal Netherlands Air Force F-16 Formal Training Unit (FTU), 12,000 RR-188 Training Chaff, 2,250 BDU-33 (ZP61C) low-drag training bombs, 20,000 MJU-7 (F071A) Infrared Decoy Flares, pilot training, JP-8 fuel, air refueling support, airlift services, CONUS base start up, base operating support, facilities, training munitions, technical data and publications, personnel training and training equipment, contractor technical and logistics personnel services, and other related elements of logistics support.**

(iv) **Military Department: Air Force (NZS, Amd #3)**

(v) **Prior Related Cases, if any: FMS case NZS - $122 million – 31Dec06**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none**

(viii) **Date Report Delivered to Congress:** AUG 06 2009

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

The Netherlands – F-16 Pilot Training and Logistics Support

The Government of Netherlands has requested a possible sale for the continuation of a Continental United States (CONUS)-based Royal Netherlands Air Force F-16 Formal Training Unit (FTU), 12,000 RR-188 Training Chaff, 2,250 BDU-33 (ZP61C) low-drag training bombs, 20,000 MJU-7 (F071A) Infrared Decoy Flares, pilot training, JP-8 fuel, air refueling support, airlift services, CONUS base start up, base operating support, facilities, training munitions, technical data and publications, personnel training and training equipment, contractor technical and logistics personnel services, and other related elements of logistics support. The estimated cost is $133 million.

This proposed sale contributes to the foreign policy and national security objectives of the U.S. by improving the military capabilities of The Netherlands and enhancing standardization and interoperability with U.S. forces.

Springfield-Beckley Air National Guard Base, Ohio, is the location where the Netherlands Air Force will train aircrews in aircraft operations and tactics. This training will enhance the Royal Netherlands Air Force's ability to continue contributions to Overseas Contingency Operations and to North Atlantic Treaty Organization air policing operations in Afghanistan, as well as, to possible future coalition operations.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The U.S. Air Force will provide program management for the FTU. The Ohio Air National Guard will provide instruction, flight operations, and maintenance support and facilities. There is no prime contractor involved in this program. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government or contractor representatives to The Netherlands.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. E9–20008 Filed 8–20–09; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for the Conveyance of Federal Lands at Lake Texoma to the State of Oklahoma, Marshall County, OK

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The purpose of the Environmental Impact Statement (EIS) is to address alternatives and environmental impacts associated with the conveyance of approximately 1,022 acres of Federal land located in Marshall County, Oklahoma, at Lake Texoma, Oklahoma and Texas, to the State of Oklahoma.

ADDRESSES: Questions or comments concerning the proposed action should be addressed to Mr. Stephen L. Nolen, Chief, Environmental Analysis and Compliance Branch, Tulsa District, U.S. Army Corps of Engineers, CESWT–PE–E, 1645 S. 101st E. Ave., Tulsa, OK 74128–4629.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Nolen, (918) 669–7660, fax: (918) 669–7546, *e-mail: Stephen.L.Nolen@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The Water Resources Development Act of 1999 (Pub. L. 106–53 113 Stat. 359) directed the Secretary of the Army (Secretary) to convey to the State of Oklahoma, at fair market value, all right, title and interest of the United States in and to approximately 1,580 acres of land located in Marshall County, OK and leased to the State of Oklahoma for public park and recreation purposes. In 2005, approximately 558 acres of these lands were conveyed to the State of Oklahoma through the Oklahoma Commissioners of the Land Office. The State of Oklahoma, through the Oklahoma Tourism and Recreation Department, is now requesting conveyance of additional lands up to the balance (approximately 1,022 acres) of that authorized by the Water Resources Development Act of 1999.

The exact acreage and description of the real property shall be determined by a survey that is satisfactory to the Secretary. The real property is currently held in fee by the U.S. Government and managed under the jurisdiction of the Tulsa District Corps of Engineers as a part of Lake Texoma, a multipurpose reservoir located along the Red River in Oklahoma and Texas. The lands subject to this action are located east of Kingston, Oklahoma along the western shore of the Washita River Arm of Lake Texoma in Marshall County, OK. Conveyed lands are anticipated to be subject to development, in conjunction with development of lands previously conveyed and adjacent private lands, to include such features as single and multi-family residential housing, hotel and conference facilities, restaurants, golf course(s), retail and commercial space, public boat ramp(s), beach and camping amenities, courtesy boat slips, and related commercial development facilities.

Reasonable alternatives to be considered include varying amounts of acreages to be conveyed, alternative deed restrictions on conveyed lands, varying development features and locations, alternative locations and nature of shoreline development, and no action.

Issues to be addressed in the EIS include but are not limited to: (1) Socioeconomic impacts associated with planned development, (2) matters pertaining to shoreline management and development, (3) potential impacts to cultural and ecological resources, (4) public access and safety, (5) impacts to lake use, public parks and recreation, (6) aesthetics, (7) water and wastewater infrastructure, (8) lake water quality, (9) traffic patterns, (10) terrestrial and aquatic fish and wildlife habitat, (11) Federally-listed threatened and endangered species, (12) potential use of dry-stack boat storage or other boat storage methods, and (13) cumulative impacts associated with past, current, and reasonably foreseeable future actions at Lake Texoma.

A public scoping meeting for the action will be conducted in early fall, 2009 in Kingston, OK or the vicinity. News releases and notices informing the public and local, state, and Federal agencies of the proposed action and date of the public scoping meeting will be published in local newspapers. Comments received as a result of this notice, news releases, and the public scoping meeting will be used to assist the Tulsa District Corps of Engineers in identifying potential impacts to the quality of the human or natural environment. Affected Federal, state, or local agencies, affected Indian tribes, and other interested private organizations and parties are encouraged to participate in the scoping process by forwarding written comments to (see **ADDRESSES**) or attending the scoping meeting.

The draft EIS will be available for public review and comment. While the specific date for release of the draft EIS has yet to be determined, all interested agencies, tribes, organizations and parties expressing an interest in this action will be placed on a mailing list for receipt of the draft EIS. In order to be considered, any comments and suggestions should be forwarded to (see **ADDRESSES**) in accordance with dates specified upon release of the draft EIS.

Dated: August 11, 2009.

Anthony C. Funkhouser,

Colonel, U.S. Army, District Commander.

[FR Doc. E9–20132 Filed 8–20–09; 8:45 am]
BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers: Intent To Prepare a Draft Environmental Impact Statement for Proposed Lake on Yellow Creek in Lamar County, AL (Department of Army Permit Number SAM–2005–4302–MNS)

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: The Mobile District, U.S. Army Corps of Engineers (Corps) intends to prepare a Draft Environmental Impact Statement (DEIS) to address the potential impacts associated with construction of a 2,040-acre water supply lake along Yellow Creek in Lamar County, AL. The Corps will be evaluating the proposed project under the authority of Section 404 of the Clean Water Act. The DEIS will be used as a basis for ensuring compliance with the National Environmental Policy Act (NEPA).

DATES: A public scoping meeting will be held on October 15, 2009.

ADDRESSES: The public scoping meeting will be held at the Lamar County Courthouse, Third Floor Courtroom, 44690 Highway 17, Vernon, Alabama 35592.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action, NEPA process, and the DEIS should be addressed to Mr. Michael B. Moxey, Regulatory Division, Inland Team Leader, Phone (251) 694–3771 or e-mail at *michael.b.moxey@usace.army.mil,* Mobile District, U.S. Army Corps of Engineers, Regulatory Division, P.O. Box 2288, Mobile, AL 36628–0001.

SUPPLEMENTARY INFORMATION: 1. The Lamar County Commission is the permit applicant. The applicant is proposing to

construct a dam and 2,040 acre lake on Yellow Creek in central Lamar County, Alabama, just north of the City of Vernon. The purpose of the proposed lake is for public water supply for Lamar County and the surrounding areas. Construction of the project as proposed would require impacts to approximately 1,660 acres of wetlands and 31.2 miles of streams. The project is in the initial stages of planning.

2. Alternatives to the applicants' proposals may exist which would reduce impacts to the surrounding aquatic environment. These could include, but are not restricted to: Considering alternate site locations for the lake, alternate site layouts that may have less impact on the environment, or pursuing alternate sources of water for Lamar County and surrounding areas. The scoping and evaluation phase of the EIS process will help in the determination of reasonable alternatives to be evaluated for the project.

3. *Scoping:* a. The Corps invites full public participation to promote open communication on the issues surrounding the proposal. The scoping process is a key part of the public outreach and involvement phase. All Federal, State, and local agencies, and other persons or organizations that have an interest are urged to participate in the NEPA scoping process. As part of the process, a public meeting will be held to receive public input and comment which will be used to assist in the identification of significant issues associated with the proposed water supply lake. A public meeting will be held at the Lamar County Courthouse in Vernon, AL on October 15, 2009. Public meetings will also be advertised through various media outlets at least 30 days prior to the meeting date.

b. The DEIS will analyze the potential social, economic, and environmental impacts to the local area resulting from the proposed project and alternatives. Specifically, the following major issues will be analyzed in the DEIS: Hydrologic and hydraulic regimes, threatened and endangered species, fish and wildlife habitat, wetlands and stream resources, essential fish habitat, and other air quality, cultural resources, wastewater treatment capacities and discharges, drainage discharges, transportation systems, alternatives, secondary and cumulative impacts, socioeconomic impacts, environmental justice (effect on minorities and low-income groups) (Executive Order 12898), and protection of children (Executive Order 13045).

c. The Corps will serve as the lead Federal agency in the preparation of the DEIS. The Corps intends to coordinate and/or consult with an interagency team of Federal and State agencies during scoping and preparation of the DEIS. A decision will be made during the scoping process whether other agencies will serve in an official role as cooperating agencies.

4. It is anticipated that the DEIS will be made available for public review in December 2010.

Craig J. Litteken,

Chief, Regulatory Division.

[FR Doc. E9–20134 Filed 8–20–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Impact Statement (EIS) in Support of the Real Property Master Plan and Real Property Exchange for Camp Parks, Dublin, CA

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability.

SUMMARY: U.S. Army Garrison, Camp Parks, with cooperation from the National Aeronautics and Space Administration (NASA), has prepared a Final EIS to evaluate alternatives for future development as part of a Real Property Master Plan (RPMP) at Camp Parks. Alternatives evaluated in the Final EIS include changes to land use for construction and training, and a Real Property Exchange (RPX) between Camp Parks and a developer in the surrounding community. The RPMP presents a land-use redevelopment plan for the Camp Parks cantonment area, with approximately 180 acres being transferred out of Federal ownership (approximately 171.5 acres is controlled by the U.S. Army and 8.5 acres is controlled by NASA).

DATES: The waiting period for the Final EIS will end 30 days after publication of an NOA in the **Federal Register** by the Environmental Protection Agency.

ADDRESSES: To request a copy of the Final EIS, contact: U.S. Army Garrison Camp Parks, Environmental Office, Building 791 5th Street, Dublin, CA 94568–5201.

FOR FURTHER INFORMATION CONTACT: Army property: Mr. Paul, (925) 875–4682, or e-mail at *Paul.kot@usar.army.mil.* NASA property: Dr. Ann Clarke, (650) 604–2350, or e-mail *Ann.Clarke@nasa.gov.*

SUPPLEMENTARY INFORMATION: The FEIS evaluates three alternatives to support the redevelopment and land exchange of Camp Parks: (1) No Action Alternative—under which there would be no comprehensive plan or vision for overall Camp Parks development, but redevelopment would occur ad hoc as funds become available, and facilities would remain largely unchanged; (2) Slow Growth Alternative—under which Camp Parks would retain all its land holdings and gradually move toward developing facilities and activities identified in the RPMP with the southern cantonment area remaining an opportunity site for future planning; and (3) Accelerated Modernization Alternative (Preferred Alternative and the Proposed Action)—under which the construction of new facilities and ranges included in the RPMP would be partially funded using the value of the land exchange (180 acres of the southern cantonment area) from Federal to private ownership. The remainder of RPMP construction at Camp Parks would be programmed as military construction projects. NASA's in holding would be sold and proceeds of the sale would be used at its NASA-Ames Research Center, Moffett Field, California.

Camp Parks has prepared a RPMP that proposes a program for revitalizing the installation infrastructure and accelerating facility replacements. The RPMP proposes approximately 1.3 million square feet of new buildings/structures and approximately 370,000 square feet of parking area. The majority of the existing structures on Camp Parks were intended to be temporary when originally constructed and are considered inadequate for today's military personnel and lifestyles. The RPMP proposes the modernization of facilities to meet the troop training requirements and amenities that are consistent with the private sector.

The Final EIS concludes that the No Action Alternative is not reasonable based on the antiquated infrastructure and buildings requiring excessive maintenance. The Final EIS also concludes that the Slow Growth Alternative (the incremental modernization using the existing cantonment area) is not reasonable since facility/activity upgrades would be prioritized and dependent on annual funding from Military Construction Army Reserve (MCAR) allocations and project proponents. MCAR funds are appropriated on an availability basis, which is not a regular or consistent occurrence.

The Army's Preferred Alternative is the accelerated modernization of a redeveloped and compacted cantonment area using the value of the land exchange to partially fund RPMP construction activities. This alternative allows for a quick implementation of the

RPMP, while providing the necessary facilities and infrastructure upgrades for adequate training of military personnel in the Bay Area.

Potential impacts from this action would include loss of non-native grasslands and modification of wetlands; loss of special-status species; traffic congestion at the Dublin Boulevard/Dougherty Road intersection; and air quality, socioeconomic, and visual impacts. Proposed mitigation measures are identified to reduce the severity and extent of potential impacts. A copy of the Final EIS is available at *http://www.liggett.army.mil.*

Dated: August 14, 2009.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health).

[FR Doc. E9–20120 Filed 8–20–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 21, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 17, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: PEQIS Survey on Students with Disabilities at Postsecondary Education Institutions.

Frequency: One time.

Affected Public: Individuals or Households; Not-for-profit institutions; State, local or Tribal Gov't.

Reporting and Recordkeeping Hour Burden:

Responses: 1,600.
Burden Hours: 800.

Abstract: This Postsecondary Education Quick Information System (PEQIS) survey is being conducted to provide the Office of Special Education and Rehabilitative Services (OSERS), U.S. Department of Education, with current information about students with disabilities at postsecondary institutions. The survey will be sent to approximately 1,600 postsecondary institutions which include 2-year and 4-year schools (including graduate level institutions). The purpose of the survey is to provide information to the U.S. Department of Education about students with disabilities at postsecondary institutions and the services, accommodations and institutional accessibility provided to these students.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4112. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–20121 Filed 8–20–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Jacob K. Javits Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.170A.

Dates:

Applications Available: August 21, 2009.

Deadline for Transmittal of Applications: October 5, 2009.

Deadline for Transmittal of the Free Application for Federal Student Aid (FAFSA): January 31, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Jacob K. Javits (JKJ) Fellowship Program is to award fellowships to eligible students of superior ability, selected on the basis of demonstrated achievement, financial need, and exceptional promise, to undertake graduate study in specific fields in the arts, humanities, and social sciences leading to a doctoral degree or to a master's degree in those fields in which the master's degree is the terminal highest degree awarded to the selected field of study at accredited institutions of higher education. The selected fields in the arts are: creative writing, music performance, music theory, music composition, music literature, studio arts (including photography), television, film, cinematography, theater arts, playwriting, screenwriting, acting, and dance. The selected fields in the humanities are: art history (including architectural history), archeology, area studies, classics, comparative literature, English language and literature, folklore, folk life, foreign languages and literature, history, linguistics, philosophy, religion (excluding study of religious vocation), speech, rhetoric, and debate. The selected fields in the

social sciences are: anthropology, communications and media, economics, ethnic and cultural studies, geography, political science, psychology (excluding clinical psychology), public policy and public administration, and sociology (excluding the master's and doctoral degrees in social work).

Program Authority: 20 U.S.C. 1134–1134d.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except as provided in 34 CFR 650.3(b)), 77, 82, 84, 85, 86, 97, 98 and 99. (b) The regulations for this program in 34 CFR part 650.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $1,181,385 for new awards.

Estimated Average Size of Awards: $43,755.

Estimated Number of Awards: 27.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Individuals who, at the time of application: are eligible to receive a Federal grant, loan or work assistance pursuant to section 484 of the Higher Education Act of 1965, as amended (HEA); intend to pursue a doctoral or Master of Fine Arts degree in an eligible field of study selected by the Board at an accredited U.S. institution of higher education; and are a U.S. citizen or national, a permanent resident of the United States, in the United States for other than a temporary purpose and intending to become a permanent resident, or a citizen of any one of the Freely Associated States. Applicants must also either: be entering into a doctoral program in academic year 2010–2011, or have not yet completed the first full year in the doctoral program, in an eligible field of study for which they are seeking support; or be entering a Master of Fine Arts program in academic year 2010–2011, or have not yet completed the first full year in the Master of Fine Arts program, in an eligible field of study for which they are seeking support.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address To Request Application Package:*

You can obtain an application package via the Internet or from the Department. To obtain a copy via the Internet, use the following address for the JKJ Fellowship Program Web site: *http://www.ed.gov/programs/jacobjavits/index.html.* To obtain a copy from the Department, write, fax, or call the following: Carmen Gordon or Sara Starke, Jacob K. Javits Fellowship Program, U.S. Department of Education, Teacher and Student Development Programs Service, 1990 K St., NW., Room 6089, Washington, DC 20006–8524. *Telephone:* (202) 502–7542 or by *e-mail: ope_javits_program@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Note: The FAFSA can be obtained from the institution of higher education's financial aid office or accessed at: *http://www.fafsa.ed.gov*.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times:*

Applications Available: August 21, 2009.

Deadline for Transmittal of Applications: October 5, 2009.

Deadline for Transmittal of the FAFSA: January 31, 2010.

Applications for grants under this program must be submitted in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations of this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted in paper format by mail or hand delivery.

a. Submission of Applications by Mail

If you submit your application by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.170A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260. You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note 1: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

Note 2: Materials mailed through the U.S. Postal Service may be subject to damage due to irradiation processes. Therefore, Arts applicants are required to send their applications by commercial carrier.

b. Submission of Applications by Hand Delivery

If you submit your application by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.170A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between

8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA Number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are established by the JKJ Program Fellowship Board, pursuant to section 702(a)(2) of the HEA and 34 CFR 650.20(a). The selection criteria for applications in the humanities and social sciences are: (a) Statement of purpose (150 points); (b) Letters of recommendation (100 points); (c) Academic record (100 points); and (d) Scholarly awards/honors (50 points). The selection criteria for applications in the arts are: (a) Statement of purpose (100 points); (b) Letters of recommendation (100 points); (c) Academic record (50 points); (d) Scholarly awards/honors (50 points); and (e) Supporting arts materials (100 points).

2. *Review and Selection Process:* The review and selection process for the JKJ Fellowship Program consists of a two-part process. Eligible applications are read and rated by a panel of distinguished scholars and academics in the arts, humanities, and social sciences on the basis of demonstrated scholarly achievements and exceptional promise. The second part of the evaluation is a determination of financial need.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we will notify you by telephone and we will send a Grant Award Notice (GAN) directly to the institution you will be attending.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* On an annual basis, fellows must submit their FAFSA to the Javits Program Coordinator at their institutions, as directed by the Secretary, pursuant to 34 CFR 650.37. In addition, Javits fellows are required to submit an annual performance report. The Department will contact fellows regarding the completion of the annual performance report.

4. *Performance Measures:* The effectiveness of the JKJ Fellowship Program will be measured by graduate completion rates, time-to-degree completion rates, and the costs per Ph.D or master's degree of talented graduate students with demonstrated financial need who are pursuing the highest degree available in their designated fields of study. Institutions of higher education in which the fellows are enrolled are required to submit an annual report documenting the fellows' satisfactory academic progress and the determined financial need. Javits fellows are also required to submit an annual performance report to assist program staff in tracking time-to-degree completion rates, graduation rates, as well as the employment status of individual fellows. The Department will use the reports to assess the program's success in assisting fellows in completing their course of study and receiving their degree.

VII. Agency Contacts

For Further Information Contact: Carmen Gordon or Sara Starke, Jacob K. Javits Fellowship Program, U.S. Department of Education, Teacher and Student Development Programs Service, 1990 K St., NW., Room 6089, Washington, DC 20006–8524. *Telephone:* (202) 502–7542 or *e-mail: ope_javits_program@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site: *http://get.adobe.com/reader.* If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: August 18, 2009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–20177 Filed 8–20–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 9, 2009, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–2347 or *e-mail: halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: History of mercury contamination on the Oak Ridge Reservation and the strategy for mercury remediation for the Reservation.

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Pat Halsey at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Pat Halsey at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm*.

Issued at Washington, DC on August 18, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–20153 Filed 8–20–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Savings Performance Contract (ESPC) Process Improvement Working Group Meeting

AGENCY: Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the Federal Energy Management Program (FEMP) within the Office of Energy Efficiency and Renewable Energy on the process for using energy savings performance contracts at DOE sites.

DATES: The public meeting will be held Wednesday, August 26, 2009, 9 a.m. until 12 Noon.

ADDRESSES: Department of Energy, Room GJ–015, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Katy Christiansen, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–7930, *katherine.christiansen@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* The purpose of the meeting is to provide an opportunity for the public to present comment on the current process for implementing energy savings performance contracts (ESPC) at DOE sites. Information on the current ESPC program at DOE can be found at *http://www1.eere.energy.gov/femp/financing/espcs.html.* DOE is considering changes for the purpose of reducing cycle times in the development and timely execution of ESPCs.

Tentative Agenda: Agenda will include the following:

- Brief background on ESPCs.
- Presentation on existing processes and cycle times.
- Outline of optimum scenario and possible areas for improvement.
- Comment period.

The meeting is open to the public. DOE invites participation by all interested parties.

For information on:

- The agenda,
- Facilities or services for individuals with disabilities,
- Requests for special assistance,
- Pre-clearance for entrance into the DOE headquarters building,
- Pre-clearance for foreign nationals (advance clearance required) and
- Requests to present or speak.

Contact *Katherine.christiansen@ee.doe.gov*, by 4 p.m. EDT, August 21, 2009.

Minutes: DOE will designate a DOE official to preside at the public meeting. The meeting will not be a judicial or evidentiary-type public hearing. A stenographer will be present to record and transcribe the proceedings. The minutes of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Public Participation: DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments about the proceedings. The public meeting will be conducted in an informal, conference style. Each participant will be allowed to make a prepared general statement (within time limits determined by DOE) before discussion of a particular topic. DOE will permit other participants to comment briefly on any general statements. At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. DOE representatives may also ask questions of participants concerning other matters relevant to ESPCs and may accept additional comments or questions from those attending, as time permits.

Issued in Washington, DC on August 17, 2009.

Richard G. Kidd IV,

FEMP Program Manager.

[FR Doc. E9–20202 Filed 8–20–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

High Energy Physics Advisory Panel

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, October 22, 2009; 9 a.m. to 6 p.m. and Friday, October 23, 2009; 8:30 a.m. to 4 p.m.

ADDRESSES: Hilton Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Kogut, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; SC–25/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: 301–903–1298.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda: Agenda will include discussions of the following:

Thursday, October 22, 2009, and Friday, October 23, 2009

- Discussion of Department of Energy High Energy Physics Program.
- Discussion of National Science Foundation Elementary Particle Physics Program.
- Reports on and Discussions of Topics of General Interest in High Energy Physics.
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut, 301–903–1298 or *John.Kogut@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 90 days on the *High Energy Physics Advisory Panel Web site*. Minutes will also be available by writing or calling John Kogut at the address and phone number listed above.

Issued at Washington, DC on August 18, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–20201 Filed 8–20–09; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2008–0896; FRL–8947–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Notification of Substantial Risk of Injury to Health and the Environment Under TSCA Section 8(e); EPA ICR No. 0794.12, OMB Control No. 2070–0046

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection Supporting Statement. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before September 21, 2009.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2008–0896 to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mail Code: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408–M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 13, 2009 (74 FR 7227), EPA sought comments on this renewal ICR pursuant to 5 CFR 1320.8(d). EPA received comments during the comment period from BASF Corp., which are addressed in the Supporting Statement. Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPPT–2008–0896, which is available for online viewing at *http://www.regulations.gov,* or in person inspection at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Pollution Prevention and Toxics Docket is 202–566–0280.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *http://www.regulations.gov.* The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in *http://www.regulations.gov.* For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Notification of Substantial Risk of Injury to Health and the Environment under TSCA Section 8(e).

ICR Numbers: EPA ICR No. 0794.12, OMB Control No. 2070–0046.

ICR Status: This ICR is currently scheduled to expire on October 31, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 8(e) of the Toxic Substances Control Act (TSCA) requires that any person who manufactures, imports, processes or distributes in commerce a chemical substance or mixture and which obtains information that reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment must immediately inform EPA of such information. EPA

routinely disseminates TSCA section 8(e) data it receives to other Federal agencies to provide information about newly discovered chemical hazards and risks. This information collection request addresses the above reporting requirement. Responses to the collection of information are mandatory (see 15 U.S.C. 2607(e)). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 51 hours per response for initial TSCA section 8(e) submissions and 5 hours per response for follow-up or supplemental submissions. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are companies that manufacture, import, process or distribute chemical substances or mixtures.

Frequency of Collection: On occasion.

Estimated average number of responses for each respondent: 1.

Estimated No. of Respondents: 721.

Estimated Total Annual Burden on Respondents: 30,515 hours.

Estimated Total Annual Costs: $2,057,588.

Changes in Burden Estimates: There is an increase of 12,380 hours (from 18,135 hours to 30,515 hours) in the total estimated respondent burden compared with that currently in the OMB inventory. This increase reflects an increase in the number of anticipated TSCA section 8(e) submissions. This change is an adjustment. The Supporting Statement provides additional detail concerning the change in burden estimates.

Dated: August 17, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–20211 Filed 8–20–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8596–5]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements Filed 08/10/2009 through 08/14/2009

Pursuant to 40 CFR 1506.9.

Special Notice: EPA's Notice of Availability for EIS's filed August 3, 2009 through August 7, 2009 scheduled to appear in the **Federal Register** on August 14, 2009 were published on Monday, August 17, 2009. Comment periods and wait periods will be calculated from August 17, 2009; *see* Amended Notices below.

EIS No. 20090285, Draft EIS, NPS, CA, Warner Valley Comprehensive Site Plan, Addressing Natural and Cultural Resource Conflicts, Parking and Circulation Improvements in Warner Valley, Implementation, Lassen Volcanic National Park, Plumas County, CA, Comment Period Ends: 11/21/2009, Contact: Louise Johnson 530–595–4444 ext. 5170.

EIS No. 20090286, Draft EIS, NPS, FL, Biscayne National Park Fishery Management Plan, Improvement of the Status of Fisheries Resources, Implementation, Miami-Dade County, FL, Comment Period Ends: 10/06/2009, Contact: Mark Lewis 305–230–1144 ext. 3003.

EIS No. 20090287, Draft EIS, AFS, CO, Willow Creek Pass Fuel Reduction Project, Implementation, Hahns Peak/Bear Ears Ranger District, Medicine Bow-Routt National Forests, Routt County, CO, Comment Period Ends: 10/05/2009, Contact: Brian Waugh 970–870–2185.

EIS No. 20090288, Final EIS, COE, CA, Natomas Levee Improvement Program, Phase 3 Landside Improvements Project, Issuance of Section 408 and 404 Permits, Sacramento and Sutter Counties, CA, Wait Period Ends: 09/21/2009, Contact: Elizabeth Holland 916–557–6763.

EIS No. 20090289, Final EIS, FTA, CO, Gold Line Corridor Project, Development of Fixed-Guideway Transit Improvements, from Denver Union Station to Ward Road in Wheat Ridge, Implementation, City and County of Denver, Adams, Arvada, Wheat Ridge, and Jefferson Counties, CO, Wait Period Ends: 09/21/2009, Contact: David Beckhouse 720–963–3306.

EIS No. 20090290, Draft EIS, FTA, WI, Kenosha-Racine-Milwaukee Commuter Rail Extension, Alternative Analysis, U.S. COE Section 404 Permit, Funding, Kenosha, Racine, and Milwaukee Counties, WI, Comment Period Ends: 10/05/2009, Contact: Stewart McKenzie 312–353–2866.

EIS No. 20090291, Final EIS, SFW, NV, Desert National Wildlife Refuge Complex, Ash Meadows, Desert, Moapa Valley and Pahranagat National Wildlife Refuges, Comprehensive Conservation Plan, Implementation, Clark, Lincoln, and Nye Counties, NV, Wait Period Ends: 09/21/2009, Contact: Cynthia Martinez 702–515–5450.

EIS No. 20090292, Final EIS, USA, CA, Camp Parks Real Property Master Plan and Real Property Exchange, Redevelopment of the Cantonment Area, NPDES Permit, U.S. COE Section 4040 Permit, Alamada and Contra Costa Counties, CA, Wait Period Ends: 09/21/2009, Contact: Jennifer Shore 703 602–4238.

Amended Notices

EIS No. 20090275, Final EIS, FHW, KY, I–65 to U.S. 31 W Access Improvement Project, To Meet the Existing and Future Transportation Demand, in northeast Bowling Green, Warren County, KY, Wait Period Ends: 09/16/2009, Contact: Jose Sepulveda 502–223–6764.

EIS No. 20090276, Final Supplement, COE, WA, Commencement Bay ''Reauthorization'' of Dredged Material Management Program Disposal Site, Implementation, Central Puget Sound, Tacoma, WA, Wait Period Ends: 09/16/2009, Contact: Dr. Stephen Martin 206–764–3631.

EIS No. 20090277, Draft EIS, AFS, CO, Hermosa Park/Mitchell Lakes Land Exchange Project, Proposed Land Exchange between Federal and Non-Federal Lands, Implementation, Federal Land in LaPlata County and Non-Federal Land in San Juan County, CO, Comment Period Ends: 10/01/2009, Contact: Cindy Hockelberg 970–884–1418.

EIS No. 20090278, Draft Supplement, FHW, NH, I–93 Highway Improvements, from Massachusetts

State Line to Manchester, NH, Funding, NPDES and and U.S. Army COE Section 404 Permits Issuance, Hillsborough and Rockingham Counties, NH, Comment Period Ends: 10/01/2009, Contact: Jamison S. Sikora 603–228–3057 Ext. 107.

EIS No. 20090279, Draft EIS, BLM, WA, Blackfoot Bridge Mine Project, Developing Three Mine Pits, Haul Roads, Water Management Structures, and Overburden Disposal Areas, Implementation, Caribou County, ID, Comment Period Ends: 10/01/2009, Contact: Kyle Free 208–478–6368.

EIS No. 20090280, Draft Supplement, FHW, TN, Shelby Avenue/Demonbreun Street (Gateway Boulevard Corridor, from I–65 North [I–24 West] to I–40 West in Downtown Nashville, To Address Transportation needs in the Study Area. Davidson County, TN, Comment Period Ends: 10/01/2009, Contact: Charles O'Neill 615–781–5770.

EIS No. 20090281, Final EIS, BLM, WY, South Gillette Area Coal Lease Applications, WYW172585, WYW173360, WYW172657, WYW161248, Proposal to Lease Four Tracts of Federal Coal Reserves, Belle Ayr, Coal Creek, Caballo, and Cordero Rojo Mines, Wyoming Powder River Basin, Campbell County, WY, Wait Period Ends: 09/16/2009, Contact: Teresa Johnson 307–261–7510.

EIS No. 20090282, Final EIS, FRC, VA, Smith Mountain Pumped Storage Project (FERC No. 2210–169). Application for Hydropower License to continue Operating the 636-megawatt Pumped Storage Project, Roanoke River, Smith Mountain Pumped Storage Project (FERC No. 2210–169). Application for Hydropower License to continue Operating the 636-megawatt Pumped Storage Project, Roanoke River, Bedford, Campbell, Franklin and Pittsylvania Counties, VA, Wait Period Ends: 09/16/2009, Contact: Julia Bovey 1–866–208–3372.

EIS No. 20090283, Draft EIS, NPS, WI, Apostle Islands National Lakeshore General Management Plan/Wilderness Management Plan, Implementation, Bayfield and Ashland Counties, WI, Comment Period Ends: 10/13/2009, Contact: Nick Chevance 402–661–1844.

EIS No. 20090284, Final EIS, ARD, WA, ADOPTION—White Pass Expansion Master Development Plan, Implementation, Naches Ranger District, Okanogan-Wenatchee National Forests and Cowlitz Valley Ranger District, Gifford Pinchot National Forest, Yakima and Lewis Counties, WA, Wait Period Ends: 09/16/2009, Contact: Frank Mancino 202–720–1827.

Dated: August 18, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–20200 Filed 8–20–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8596–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** Dated July 17, 2009 (74 FR 34754).

Draft EISs

EIS No. 20090152, ERP No. D–BLM–J80008–UT, Mona to Oquirrh Transmission Corridor Project and Draft Pong Express Resource Management Plan Amendment, Construction, Operation, Maintenance and Decommissioning a Double-Circuit 500/345 Kilovolt (Kv) Transmission Line, Right-of-Way Grant, Rocky Mountain Power, Juab, Salt Lake, Tooele and Utah Counties, UT.

Summary: EPA expressed environmental concerns about wetland impacts and the disturbance of a Superfund site, and requested additional information on wetland and air quality impacts. Rating EC2.

EIS No. 20090159, ERP No. D–FHW–E40827–NC, Gaston East-West Connector Project, Construction from I–85 west Gastonia to I–485/NC 160 near the Charlotte-Douglas International Airport, Gaston and Meckleburg Counties, NC.

Summary: EPA expressed environmental objections because the project will potentially contribute significant VMTs and increased emissions and ultimately make achievement of the NAAQS difficult. In addition, jurisdictional waters are currently impaired in the project study area from construction and related activities. Both the direct and indirect and cumulative impacts will potentially further degrade water quality. Rating EO2.

EIS No. 20090170, ERP No. D–FHW–F40448–WI, Zoo Interchange Corridor Study, Reconstruction to I0–94 from 70th Street to 124 Street and on U.S. 45 from Burleigh Street to I–894/U.S. 45 and Lincoln Avenue in Milwaukee County, WI.

Summary: EPA expressed environmental concerns about air quality, wetland, and surface water impacts. Rating EC2.

EIS No. 20090171, ERP No. D–NOA–L99011–WA, PROGRAMMATIC—Lower Duwamish River Natural Resource Damage Assessment (NRDA) Restoration Plan, Implementation, King County, WA.

Summary: While EPA has no objections to the proposed action, it requested clarification of water quality issues. Rating LO.

EIS No. 20090178, ERP No. D–IBR–K29002–CA, North Bay Water Recycling Program (NBWRP), (Formerly North San Pablo Bay Restoration and Reuse Project), Proposed to Promote the Expanded Beneficial Use of Recycled Water, Northern Marin Water District, Napa County, CA.

Summary: While EPA has no objection to the proposed action, it requested clarification of water related issues. Rating LO.

EIS No. 20090181, ERP No. D–AFS–K65368–CA, Lower Trinity and Mad River Motorized Travel Management, Proposed to Prohibit Cross-County Motor Vehicle Travel Off Designated National Forest Transportation System (NFTS) Roads and Motorized Trails, Six River National Forest, CA.

Summary: EPA expressed environmental concerns about impacts to riparian and aquatic resources and to perennial creeks, wet meadows, and fens. Rating EC2.

EIS No. 20090189, ERP No. D–AFS–K65370–CA, Beaverslide Timber Sale and Fuel Treatment Project, Proposing to Harvest Commercial Timber and Treat Hazardous Fuels, Six Rivers National Forest, Mad River Ranger District, Trinity County, CA.

Summary: EPA expressed environmental concerns about potential adverse impacts to already impaired water bodies. Rating EC2.

EIS No. 20090199, ERP No. D–AFS–L65573–OR, Westside Rangeland Analysis Project, Proposal to Allocate Forage for Commercial Livestock Grazing on Six Alternatives, Mud and

Tope Creeks, Wallowa Valley Ranger District, Wallowa-Whitman National Forest, Wallowa County, OR.

Summary: EPA expressed environmental concerns about the potential impacts to water quality within creeks that are already on the Oregon State's most current 303(d) list and subsequent impacts to aquatic resources therein. Rating EC2.

EIS No. 20090200, ERP No. D–AFS–F65076–MI, Niagara Project, To Address Site-Specific Vegetation and Transportation System Needs in the Project Areas, Hiawatha National Forest, St. Ignace and Sault Ste. Marie Ranger Districts, Mackinac and Chippewa Counties, MI.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20090205, ERP No. DS–AFS–L65531–OR, Invasive Plant Treatments within the Deschutes and Ochoco National Forests and the Crooked River National Grassland, Updated Information on Three New Alternatives, Proposal for Treatment of Invasive Plant Infestation and Protection of Uninfested Areas, Implementation, Several Cos. OR.

Summary: EPA's previous issues have been resolved; therefore, EPA has no objection to the proposed action. Rating LO.

Final EISs

EIS No. 20080504, ERP No. F–FRC–D03016–MD, Sparrows Point Liquefied Natural Gas (LNG) Import Terminal Expansion and Natural Gas Pipeline Facilities, Construction and Operation, Application Authorization, U.S. COE Section 10 and 404 Permits, Baltimore County, MD.

Summary: EPA continues to have environmental concerns about wetland impacts and air conformity issues.

EIS No. 20090153, ERP No. F–AFS–J65484–MT, Grizzly Vegetation and Transportation Management Project, Proposes Timber Harvest, Prescribed Burning, Road Maintenance, and Transportation Management Actions, Three Rivers Ranger District, Kootenai National Forest, Lincoln County, MT.

Summary: EPA continues to have environmental concerns about impacts to riparian areas, soils and grizzly bear habitat.

EIS No. 20090186, ERP No. F–FRC–K03031–CA, South Feather Power Project, (Project No. 2099–068), Application to Relicense its 104-megawatt, South Fork Feather River, Lost Creek and Slate Creek, Butte, Yuba, and Plumas Counties, CA.

Summary: EPA continues to have environmental concerns about impacts to water quality, cumulative impacts and a lack of discussion of climate change effects on the project.

EIS No. 20090191, ERP No. F–NOA–D91001–00, Amendment 1 to the Consolidated Highly Migratory Species (HMS) Fishery Management Plan, (FMP), Updating and Revising Essential Fish Habitat (EFH) for Atlantic Highly Migratory Species (HMS) consider additional Habitat Area of Particular Concern (HAPC) and Analyze Fishing Impacts, Chesapeake Bay, MD, Delaware Bay, DE, Great Bay, NJ and Outer Bank off NC.

Summary: EPA does not object to the proposed action.

EIS No. 20090207, ERP No. F–FHW–J40184–UT, SR–262; Montezuma Creek to Aneth Project, Improvements to the Intersection of SR–162, SR–262, and County Road (CR) 450 in Montezuma Cree, Funding, Navajo Nation, San Juan County, UT.

Summary: EPA continues to have environmental concerns about water quality and recommended measures to reduce increased sedimentation and erosion.

EIS No. 20090212, ERP No. F–FTA–F40434–MN, Central Corridor Project, Selected the Preferred Alternative, 11 miles Light Rail Transit between downtown Minneapolis and downtown St. Paul, Minnesota, Twin Cities Metropolitan Area, MN.

Summary: While EPA previous issues have been resolved, it requested clarification on hazardous waste sites, parking losses, future stations in environmental justice neighborhoods and stormwater management.

EIS No. 20090216, ERP No. F–COE–E39075–MS, PROGRAMMATIC EIS—Mississippi Coastal Improvements Program (MsCIP), Comprehensive Plan, Implementation, Hancock, Harrison and Jackson Counties, MS.

Summary: EPA does not object to the proposed action.

EIS No. 20090217, ERP No. F–AFS–L65561–AK, Logjam Timber Sale Project, Proposes Timber Harvesting from 4 Land Use Designations, Tongass Land and Resource Management Plan, Thorne Bay Ranger District, Tongass National Forest, Prince of Wales Island, AK.

Summary: EPA continues to have environmental concerns about impacts to water quality.

EIS No. 20090243, ERP No. F–COE–E39078–FL, C–111 Spreader Canal Western Project, To Restore Ecosystem Function in Taylor Slough and Florida Bay Areas, Central and Southern Florida Project, Comprehensive Everglades Restoration Plan (CERP), Everglades National Park, Miami-Dade County, FL.

Summary: EPA does not object to the proposed action.

EIS No. 20090220, ERP No. FA–NOA–A91061–00, Amendment 10 Atlantic Mackerel, Squid, Butterfish Fishery Management Plan, Development of a Rebuilding Program that Allows Butterfish Stock to Rebuild in the Shortest Time Possible, Exclusive Economic Zone (EEZ), off the U.S. Atlantic Coast.

Summary: EPA does not object to the proposed action.

Dated: August 18, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–20199 Filed 8–20–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL—8947–7]

Science Advisory Board Staff Office; Notification of Two Public Teleconference Meetings of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces two public teleconference meetings of the chartered SAB to conduct reviews of two draft SAB reports and to conduct additional business.

DATES: The meeting dates will be Wednesday, September 23, 2009 from 1 p.m. until 4 p.m. and Thursday, September 24, 2009, from 1 p.m. until 4 p.m. (all times are Eastern Time).

ADDRESSES: The meetings will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning this public teleconference meeting should contact Mr. Thomas Miller, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 343–9982; fax (202) 233–0643; or e-mail at *miller.tom@epa.gov*. General

information concerning the EPA Science Advisory Board can be found on the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (FACA), notice is hereby given that the EPA Science Advisory Board will hold a public meeting to conduct two reviews of draft SAB committee reports and to conduct other business as noted. The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee under FACA. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: (a) *SAB Quality Review of the Draft SAB Report on Reactive Nitrogen in the United States.* The Chartered Science Advisory Board will conduct a review of the SAB Integrated Nitrogen Committee (INC) draft report: *Reactive Nitrogen in the United States; An Analysis of Inputs, Flows, Consequences, and Management Options* from 1 p.m. until not later than 4 p.m. on Wednesday, September 23, 2009. Reactive nitrogen, a form of nitrogen consisting mainly of ammonium and nitrate, is ''fixed'' by natural or human-driven processes or recycled from decaying organic matter. Increasing quantities of reactive nitrogen released by human activities, such as the production and use of synthetic fertilizers, burning of fossil fuel, and planting of nitrogen-fixing crops currently surpasses the amount of nitrogen fixed by natural processes (*e.g.,* microbial activities, wildfire). Adverse environmental effects may occur when reactive nitrogen occurs in amounts that exceed what the ecosystem can normally use or recycle. Adverse effects may include degradation of air and water quality, harmful algae blooms, hypoxia, fish kills, loss of drinking water supplies, loss of biodiversity, forest declines, and human health effects.

The SAB Integrated Nitrogen Committee undertook this study to assess linkages among the environmental effects of reactive nitrogen and to explore their implications for nitrogen research and risk management. The study recommends a more integrated approach to reactive nitrogen research and identifies opportunities for integrated approaches for nitrogen management. Information about the work of the SAB Integrated Nitrogen Committee is available on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Nitrogen%20Project?OpenDocument.*

(b) *SAB Quality Review of the Draft Radiation Advisory Committee Report on Radiogenic Cancer Risk.* The chartered Science Advisory Board will conduct a quality review of the draft report from its Radiation Advisory Committee during its teleconference scheduled from 1 p.m. until 4 p.m. on Thursday, September 24, 2009. EPA's Office of Air and Radiation requested an SAB review of a draft document entitled *EPA Radiogenic Cancer Risk Models and Projections for the U.S. Population* dated December 2008. EPA's draft document discusses a revised approach to cancer dose-response assessment for radionuclides, based on recommendations in the National Academies of Science 2005 report on *Biological Effects of Ionizing Radiation* (known as the BEIR VII report) as modified and expanded for EPA's purposes. At this teleconference, the SAB will conduct a quality review of the SAB Radiation Advisory Committee's draft advisory on this EPA draft document. Information about this work of the SAB Radiation Advisory Committee is available on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/%E2%80%9CRevised%20Book%E2%80%9D?OpenDocument*. The SAB will also discuss plans for future SAB advisory activities.

Availability of Meeting Materials: The agenda and other materials in support of these meetings will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of each meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider during this teleconference. *Oral Statements:* In general, individuals or groups requesting time to make an oral presentation at a public SAB teleconference will be limited to three minutes, with no more than one-half hour for all speakers. To be placed on the public speakers list for the September 23 and September 24, 2009 teleconferences, interested individuals should contact Mr. Thomas Miller, DFO, in writing (preferably by e-mail), by September 14, 2009 at the contact information provided above. *Written Statements:* Written statements relevant to the September 23 and September 24, 2009 teleconferences should be received in the SAB Staff Office by September 15, 2009 so that the information may be made available to the SAB for their consideration prior to the teleconference meeting. Written statements should be supplied to the DFO via e-mail to *miller.tom@epa.gov* (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Thomas Miller at (202) 343–9982, or *miller.tom@epa.gov.* To request accommodation of a disability, please contact Mr. Miller, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: August 14, 2009.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9–20171 Filed 8–20–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8947–9; EPA–HQ–OEI–2008–0791]

Type of Action: Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), EPA's Office of Pollution Prevention and Toxics (OPPT) is providing notice of its proposal to amend an existing system of records (SOR) by changing the title of ''Lead-Based Paint System of Records'' (LPSOR) to the ''Federal Lead-based Paint Program System of Records'' (FLPPSOR). FLPPSOR stores information in both electronic and hard-copy formats and contains information about individuals who: have applied for certification to conduct lead-based paint and renovation activities; are students taking classes in lead-based paint and renovation activities; or have been identified to provide training in lead-based paint and renovation activities. On April 22, 2008, EPA published the Renovation, Repair, and Painting Program rule in the **Federal Register** with an effective date of June 23, 2008. The Renovation, Repair, and Painting rule establishes requirements for training renovators and dust-sampling technicians; certifying renovators, dust-sampling technicians and renovation firms; accrediting providers of renovator

and dust-sampling technician training; and renovation work practices. FLPPSOR will contain information about individuals who are certified inspectors, supervisors, risk assessors, project designers, abatement workers, renovators and dust-sampling technicians. EPA administers the certification and accreditation programs in States, Tribal areas, and territories that do not have EPA's authorization to independently administer such programs. EPA is no longer requiring individuals to provide their social security numbers on application forms for certification.

DATES: Persons wishing to comment on this system of records notice amendment must do so by September 30, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–2008–0791, by one of the following methods:

- *http://www.regulations.gov.:* Follow the online instructions for submitting comments.
- *E-mail: oei.docket@epa.gov.*
  Fax: 202–566–1752.
- *Mail:* OEI Docket, Environmental Protection Agency, Mail code: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* OEI Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–2008–0791. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov.* The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center home page at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available (*e.g.*, CBI or other information for which disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1745.

FOR FURTHER INFORMATION CONTACT: Robert Wright, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 566–1975; *e-mail address: wright.robert@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

FLPPSOR contains information about individuals who: have applied for certification to perform lead-based paint and renovation activities; take classes on how to perform lead-based paint and renovation activities; and/or are identified on behalf of firms to provide training in lead-based paint and renovation activities. In addition, FLPPSOR will contain information about individuals who: are certified renovators or dust sampling technicians; are taking renovator or dust-sampling technician training classes; or have been identified by those firms that are accredited by EPA to provide training for renovation or dust-sampling technician courses. The EPA Federal Lead-Based Paint Program system of records does not duplicate any existing system of records. The system handles Privacy Act protected information in the same manner regardless of whether the information is contained in electronic or hard-copy form. Access to the system is restricted to authorized users and will be maintained in a secure, password-protected computer system, in secure areas and buildings with physical access controls and environmental controls. The system is maintained by EPA's Office of Pollution Prevention and Toxics.

Dated: July 25, 2009.

Linda A. Travers,

Acting Assistant Administrator and Chief Information Officer.

EPA–54

SYSTEM NAME:

Federal Lead-Based Paint Program System of Records (FLPPSOR).

SYSTEM LOCATION:

Records maintained in FLPPSOR are stored in electronic and hard-copy formats at Research Triangle Park (RTP), NC, EPA regional offices and the Federal program contractor's office. In addition:

(1) The main system is located at EPA's National Computer Center (NCC) in Research Triangle Park (RTP), North Carolina. This database contains information entered from some of the primary sources listed below under ''Categories of Records in the System'' (submitted form and notifications).

(2) Hard-copy files are located in EPA regional offices and the facility operated by EPA's Federal program contractor's office. These records include the original or photocopied paper submissions (including supplementary information) provided to the Agency. Though similar in file content, the hard-copy collections maintained by the EPA contractor may differ from those maintained by the applicable regional office.

(3) EPA regional offices have developed electronic systems for their local uses. These electronic records are maintained separate from the main central server at RTP and are used solely by the regional offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include those who have applied for certification to perform lead-based paint and renovation activities in the following disciplines: inspectors,

supervisors, risk assessors, project designers, abatement workers, renovators, and dust-sampling technicians. Certified inspectors, supervisors, risk assessors, project designers, and abatement workers may be listed on EPA's Lead home page in the future. All renovators and dust-sampling technicians will be listed on EPA's Lead home page.

CATEGORIES OF RECORDS IN THE SYSTEM:

FLPPSOR contains individuals' names, home addresses, telephone numbers, dates of birth, work-related information, signatures, course test scores, submitted fees, and certificate numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 CFR Part 745 Lead—Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities and 40 CFR Part 745 Lead—Renovation, Repair, and Painting Program.

PURPOSE(S):

The purpose of FLPPSOR is to maintain information submitted to the Agency through various documents under the Federal Lead-Based Paint Program and the Federal Lead-Based Paint Renovation, Repair and Painting Program. These records include application forms, notification forms, and various support documents. FLPPSOR supports activities integral to the program (*i.e.*, issuing certificates and badges, analyzing information, generating letters and reports, and providing information to allow for executing various enforcement actions).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM AND THEIR PURPOSE; CATEGORIES OF USERS:

General routine uses are as follows: A, B, C, E, F, G, H, I, K, and L. (A detailed description of these routine uses can be found in the Agency's System of Records Web site at *http://www.epa.gov/privacy/notice/general.htm*). In addition, the following routine uses may also apply:

PROGRAM DISCLOSURE/USER CATEGORIES:

Consistent with applicable provisions of the Privacy Act and the Freedom of Information Act (FOIA), the Agency may disclose information from FLPPSOR to Federal, State, or local agencies, present and former employers and business and personal associates, and hearing officials, as a given situation might require, for purposes including the following:

(1) To verify the identity of the individual;

(2) To enforce the conditions or terms of the Agency's Lead-Based Paint Program and Lead-Based Paint Renovation, Repair and Painting Program regulations;

(3) To investigate possible fraud by, for example, applicants and users, and verify compliance with Agency Lead-Based Paint Program and Lead-Based Paint Renovation, Repair and Painting Program regulations;

(4) To prepare for litigation or to litigate fee collections and reporting enforcement matters;

(5) To initiate a limitation, suspension, and termination (LS&T) or debarment action;

(6) To investigate complaints, update files, and correct errors;

(7) To prepare for alternative dispute resolutions (ADR) in any of the cases described in paragraphs (2), (3), and (4);

(8) To engage in audits or other internal matters within EPA;

(9) To contact certified individuals and applicants in the event of a system modification; or

(10) To respond to a change to FLPPSOR, as in the case of a modification, revocation, or termination of a user's access privileges.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING ACCESS, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

FLPPSOR maintains records on individuals derived from a variety of sources relating to the undertaking of lead-based paint activities; lead-based paint renovation, repair and painting activities; and training. These record sources include the following forms submitted to EPA: EPA Form 8500–27, ''Application and Instructions for Firms Applying for Certification of Lead-Based Paint and Renovation Activities;'' EPA Form 8500–25, ''Application and Instructions for Training Providers Applying for Accreditation of Lead-Based Paint Activity and Renovation Training Programs,'' and EPA Form 8500–28, ''Application and Instructions for Individuals Applying for Certification to Conduct Lead-Based Paint Activities.'' The information derived from these forms concerns individuals, firms and training providers who have applied for certification or accreditation in lead-based paint or renovation activities. Two record sources include information derived from required notifications submitted to EPA pursuant to 40 CFR Part 745. The first of these latter record sources requires firms certified under 40 CFR 745.226 to provide notification to the Agency prior to conducting lead-based paint abatement activities. The second of these record sources requires training programs accredited under 40 CFR 745.225 to provide notification to the Agency prior to and then following conducting lead-based paint abatement and renovation, repair and painting activities training courses. The data derived from these notifications include information on individuals who supervise lead-based paint abatement and prepare the notification to EPA prior to doing so or serve as instructors for managing other instructors or attending training as students of these accredited programs. Finally, other record sources of information stored in the system may include supplementary documents obtained by regional offices in the application approval process.

- *Storage:* Records maintained under the FLPPSOR are stored in different formats and in several locations. Each of these record collections, which together comprise the FLPPSOR, must adhere to the requirements of the Privacy Act and are subject to the rules and restrictions for disclosure of information specified under the Freedom of Information Act.
- *Retrievability:* Records may be retrieved by an individual's name, application ID number, applicant ID number, or program activity.
- *Safeguards:* Physical access to the system housed in the facility at RTP is controlled by a computerized badge-reading system, with security patrols during non-business hours. All interactions between the system and the authorized individual users are recorded through use of a card reader and tracking database. Paper records stored at EPA's Federal program contractor are protected by computerized badge-reading security systems, with files maintained in locked file drawers. Records stored at EPA regional offices are secured through building security protocols and computerized badge-reading systems.
- *Retention and Disposal:* EPA will retain and dispose of these records in accordance with the EPA Records Schedule 089 and the National Archives and Records Administration General Records Schedule 23/8. Application records maintained in the system are deleted/destroyed two years after the date of the last entry.

SYSTEM MANAGER'S ADDRESS AND TELEPHONE NUMBER:

Maria J. Doa, Ph.D., Director, National Program Chemicals Division, USEPA, Office of Pollution Prevention and Toxics, (7404T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, (202) 566–0500.

NOTIFICATION PROCEDURE:

Requests to determine whether this system of records contains a record pertaining to you must be sent to the

Agency's Freedom of Information Office. The address is: U.S. Environmental Protection Agency; 1200 Pennsylvania Ave., NW., Room 6416 West; Washington, DC 20460; (202) 566–1667; *E-mail:* (*hq.foia@epa.gov*); *Attn:* Privacy Act Officer.

RECORD ACCESS PROCEDURES:

Requesters seeking access to this system will be required to provide adequate identification (*e.g.*, driver's license, military identification card, employee badge or identification card) and, if necessary, proof of authority. Additional identity verification procedures may be required as warranted. Requests must meet the requirements of EPA regulations at 40 CFR Part 16.

CONTESTING RECORDS PROCEDURES:

If you wish to contest a record in the system of records, contact the Agency's Freedom of Information Office as described under ''Notification Procedure'' listed above.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals, firms, and training providers who are certified and/or accredited to perform lead-based paint and renovation activities.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E9–20209 Filed 8–20–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8947–8]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(h)(1), notice is hereby given of a proposed administrative settlement concerning Jones Road Ground Water Plume Superfund Site, Houston, Harris County, Texas.

The settlement requires Henry T. T. Lucky, Inc., settling party to pay a total of $160,000 as payment of response costs to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before September 21, 2009.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Kenneth Talton, 1445 Ross Avenue, Dallas, Texas 75202–2733 or by calling (214) 665–7475. Comments should reference the Jones Road Ground Water Superfund Site, Houston, Harris County, Texas, and EPA Docket Number 06–13–08, and should be addressed to Kenneth Talton at the address listed above.

FOR FURTHER INFORMATION CONTACT: George Malone, III, 1445 Ross Avenue, Dallas, Texas 75202–2733 or call (214) 665–8030.

Dated: August 12, 2009.

Lawrence C. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E9–20210 Filed 8–20–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8947–5]

Proposed CERCLA Section 122(g) Administrative Agreement for De Minimis Settlement for the Mercury Refining Superfund Site, Towns of Guilderland and Colonie, Albany County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region II, of a proposed *de minimis* administrative agreement pursuant to Section 122(g) of CERCLA, 42 U.S.C. 9622(g), between EPA and two hundred ninety one (291) settling parties pertaining to the Mercury Refining Superfund Site (''Site'') located in the Towns of Guilderland and Colonie, Albany County, New York. The settlement requires specified individual payments by each settling party to the EPA Hazardous Substance Superfund Mercury Refining Superfund Site Special Account, which combined total $3,743,361.69. Each settling party's individual settlement amount is considered to be that party's fair share of cleanup costs incurred and anticipated to be incurred in the future, plus a ''premium'' that accounts for, among other things, uncertainties associated with the costs of that future work at the Site. The settlement includes a covenant not to sue pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, relating to the Site, subject to limited reservations, and protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5). For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before September 21, 2009.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Mercury Refining Superfund Site, Index No. CERCLA–02–2009–2006. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: Sharon E. Kivowitz, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3183. E–Mail: *kivowitz.sharon@epa.gov.*

Dated: August 11, 2009.

John S. Frisco,

Acting Director, Emergency and Remedial Response Division, EPA, Region 2.

[FR Doc. E9–20212 Filed 8–20–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0263; FRL–8427–1]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice of receipt of several pesticide petitions filed for residues of pesticide chemicals in or on various commodities in the **Federal Register** of Wednesday, June 10, 2009. This document is being issued to correct item 5, PP 9F7537, under the ''New Tolerance'' section (EPA–HQ–OPP–2009–0263).

FOR FURTHER INFORMATION CONTACT: Rita Kumar, Registration Division, Mail Code (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8291; e-mail address: *kumar.rita@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0263 publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Does this Correction Do?

FR Doc. E9-13161 published in the **Federal Register** of Wednesday, June 10, 2009 (74 FR 27540) (FRL–8417–7) is corrected as follows:

1. On page 27540–27541, under item 5. PP 9F7537. (EPA–HQ–OPP–2009–0263), add ''papaya at 1.5 ppm'' after the entry for ''white sapote at 1.5 ppm;'' to list of commodities on page 27541.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 21, 2009.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–19645 Filed 8–20–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 3:30 p.m. on Wednesday, August 26, 2009, to consider the following matters:

SUMMARY AGENDA: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

DISCUSSION AGENDA:

Memorandum and resolution re: Final Statement of Policy of Qualifications for Failed Bank Acquisitions.

Memorandum and resolution re: Final Rule on the Extension of the Transaction Account Guarantee Program.

Memorandum and resolution re: Notice of Proposed Rulemaking Regarding Risk-Based Capital Guidelines; Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs; and Other Related Issues.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html*.

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: August 19, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–20256 Filed 8–19–09; 11:15 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also

includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 17, 2009.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Bern Bancshares, Inc., Bern, Kansas; to acquire up to an additional 1.57 percent, for a total of 6.48 percent, of the voting shares of UBT Bancshares, Inc., and thereby indirectly acquire additional voting shares of United Bank & Trust, both in Marysville, Kansas.

Board of Governors of the Federal Reserve System, August 18, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–20110 Filed 8–20–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on its proposal to extend through September 30, 2012, the current PRA clearance requirements contained in the FTC Red Flags/Card Issuers/Address Discrepancies Rules (''Red Flags Rule'' or ''Rule''). The current clearance expires on September 30, 2009.

DATES: Comments must be submitted on or before September 21, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Red Flags Rule, PRA Comment, P095406'' to facilitate the organization of comments. Please note that comments—including your name and your state—will be placed on the public record of this proceeding—including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccoments/shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secrets and commercial or financial information obtained from a person and privileged or confidential . . .,'' as provided in section 6(f) of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*http://secure.commentworks.com/ftc-RedFlagsPRA*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*http://secure.commentworks.com/ftc-RedFlagsPRA*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Red Flags Rule, PRA Comment, P095406'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccoments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

All comments should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-5167 because U.S. postal mail at the OMB is subject to delays due to heightened security precautions.

FOR FURTHER INFORMATION CONTACT: Steven Toporoff, Attorney, Bureau of Consumer Protection, (202) 326-2252, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On April 24 2009, the FTC sought comment on the information collection requirements associated with the Red Flags Rule, 16 CFR Part 681 (Control Number: 3084-0137). 74 FR 18709. No comments were received. Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501-3521, the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before September 21, 2009.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

I. Overview of the Rule

The Rule implements sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act''). These sections amend the Fair Credit Reporting Act of 1970 (''FCRA''), 15 U.S.C. 1681 *et seq.*, to require businesses to undertake measures to prevent identity theft and to increase the accuracy of consumer reports.

Specifically, section 114 amends section 615 of the FCRA to require creditors and financial institutions to develop and implement written Identity Theft Prevention Programs. Section 114 also mandates specific regulations that require credit and debit card issuers to assess the validity of notifications of changes of address under certain circumstances. Section 315 of FACT Act adds section 605(h) to the FCRA and requires regulations that provide guidance on what users of consumer reports must do when they receive a notice of address discrepancy from a nationwide consumer reporting agency (''CRA'').

II. Description of Collections of Information

A. Section 114

The Rule requires financial institutions and creditors to develop and implement a written Identity Theft Prevention Program (''Program'') to detect, prevent, and mitigate identity theft in connection with existing accounts or the opening of new accounts. Under the Rule, creditors and financial institutions must conduct a periodic risk assessment to determine if they maintain ''covered accounts.'' The Rule defines that term as either (1) a consumer account that is designed to permit multiple payments or transactions, or (2) any other account for which there is a reasonably foreseeable risk of identity theft. Each financial institution and creditor that has covered accounts must create a written Program that contains reasonable policies and procedures to identify relevant indicators of the possible existence of identity theft (''Red Flags''); detect Red Flags that have been incorporated into the Program; respond appropriately to any Red Flags that are detected to prevent and mitigate identity theft; and update the Program periodically to ensure it reflects changes in risks to customers.

The Rule also requires financial institutions and creditors to: (1) obtain approval of the initial written Program by the board of directors, a committee thereof or, if there is no board, an appropriate senior employee; (2) ensure oversight of the development, implementation, and administration of the Program; (3) train staff, as needed, to implement the Program; and (4) exercise appropriate and effective oversight of service provider arrangements. In addition, the Rule implements the section 114 requirement that financial institutions or creditors that issue debit or credit cards (''card issuers'') generally must assess the validity of change of address notifications. Specifically, if the card issuer receives a notice of change of address for an existing account and, within a short period of time (during at least the first 30 days), receives a request for an additional or replacement card for the same account, the issuer must follow reasonable policies and procedures to assess the validity of the change of address through one of three methods.

B. Section 315

The Rule also implements section 315 of the FACT Act and requires each user of consumer reports to have reasonable policies and procedures in place to employ when the user receives a notice of address discrepancy from a CRA. Specifically, each user of consumer reports must develop and implement reasonable policies and procedures to: (1) enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it has requested the report, when the user receives a notice of address discrepancy; and (2) furnish an address for the consumer that the user has reasonably confirmed is accurate to the CRA from which it received a notice of address discrepancy if certain conditions are met.

III. Burden Estimates

Rounded to the nearest thousand, overall estimated burden hours for sections 114 and 315, combined, total 6,151,000 and the associated estimated labor cost is $169,000,000. Staff assumes that affected entities will already have in place, independent of the Rule, equipment and supplies necessary to carry out the tasks necessary to comply with it.

A. Section 114

1. Estimated Hours Burden - Red Flags Rule

As noted above, the Rule requires financial institutions and creditors with covered accounts to develop and implement a written Program. Under the Rule, a ''financial institution'' is ''a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds a transaction account (as defined in section 19(b) of the Federal Reserve Act) belonging to a consumer.''[2] Under the Rule, ''creditor'' has the same meaning as in section 702 of the Equal Credit Opportunity Act (ECOA). Section 702 defines ''creditor'' as any person who ''regularly extends, renews or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of any original creditor who participates in the decision to extend, renew, of continue credit.'' ''Credit'' means an arrangement by which you defer payment of debts or accept deferred payment for the purchase of property or services.[3]

Given the broad scope of entities covered, it is difficult to determine precisely the number of financial institutions and creditors that are subject to the FTC's jurisdiction. There are numerous small businesses under the FTC's jurisdiction, and there is no formal way to track them; moreover, as a whole, the entities under the FTC's jurisdiction are so varied that there are no general sources that provide a record of their existence.

Nonetheless, FTC staff estimates that the Rule's requirement to have a written Program affects over 57,000 financial institutions[4] and almost 2 million creditors.[5] This is a revised estimate of the number of covered financial institutions within the FTC's jurisdiction. In the PRA burden

[2] The Rule refers to the definition of ''financial institution'' that is found in the FCRA, 15 U.S.C. § 1681a(t).

[3] The Rule defines ''credit'' and ''creditor'' by referring to the definition found in the FCRA, 15 U.S.C. § 1681a(r)(5) which, in turn, refers to section 702 of the ECOA.

[4] As of December 31, 2005, there were 3,302 state-chartered federally-insured credit unions and 362 state-chartered nonfederally insured credit unions. *See* (*www.ncua.gov/news/quick_facts/quick_facts.html*) and ''Disclosures for Non-Federally Insured Depository Institutions under the Federal Deposit Insurance Corporation Improvement Act (FDICIA),'' 70 FR 12823 (Ma. 16, 2005). As of 2007, there were 3,913 property, casualty and life, and health insurance companies. *See* Insurance Department Resources Report 2007, published by the National Association of Insurance Commissioners (NAIC). As of September 2007, there were 4,733 registered investment companies. *See* Securities and Exchange Commission, Proposed Regulation S-P, at 13709 (March 13, 2008). As of December 31, 2007, there were 5,561 broker-dealers. *See* Securities and Exchange Commission, Amendments to Regulation SHO, Release No. 34-58773, at 45 (Oct. 14, 2008) (available at *www.sec.gov/rules/final/2008/34-58773.pdf*). As of November 2008, there were 39,408 money service businesses. *See* Department of the Treasury Financial Crimes Enforcement Network MSB Registration List (available at (*www.msb.gov/pdf/msb_registration_list.pdf*)).

[5] *See infra* notes 7 and 8 accounting for this sum total.

estimates set forth in the preamble to the Final Rule, the Commission stated that there were 3,664 financial institutions within the FTC's jurisdiction, namely 3,664 state-chartered credit unions. *See* 72 FR 63718, 63741 n.61 and accompanying text (Nov. 9, 2007). This estimate misstated the scope of the FTC's jurisdiction. Under the FCRA, the financial institutions over which the FTC has jurisdiction include not only state-chartered credit unions, but other entities that hold consumer transaction accounts, excluding banks, savings and loan associations, and federal credit unions, which are subject to oversight by the federal bank regulatory agencies and the National Credit Union Administration. In fact, the financial institutions within the FTC's jurisdiction include, but are not limited to, certain insurance companies, investment companies, broker-dealers, and money service businesses.

To estimate burden hours for the Red Flags Rule under section 114, FTC staff divided affected entities into three categories, based on the nature of their businesses: (1) entities that are subject to a high risk of identity theft; (2) entities that are subject to a low risk of identity theft, but have covered accounts that will require them to have a written Program; and (3) entities that are subject to a low risk of identity theft, but do not have covered accounts.[6]

a. High-Risk Entities

FTC staff estimates that high-risk entities will each require 25 hours to create and implement a written Program, with an annual recurring burden of one hour. FTC staff anticipates that these entities will incorporate into their Programs policies and procedures that they likely already have in place. Further, FTC staff estimates that preparation of an annual report will require each high-risk entity four hours initially, with an annual recurring burden of one hour. Finally, FTC staff believes that many of the high-risk entities, as part of their usual and customary business practices, already take steps to minimize losses due to fraud, including conducting employee training. Accordingly, only relevant staff need be trained to implement the Program: for example, staff already trained as part of a covered entity's anti-fraud prevention efforts do not need to be re-trained except as incrementally needed. FTC staff estimates that training in connection with the implementation of a Program of a high-risk entity will require four hours, and recurring annual training thereafter will require one hour.

Thus, estimated hours burden for high-risk entities is as follows:

●320,217 high-risk entities[7] subject to the FTC's jurisdiction at an average annual burden of 13 hours per entity [average annual burden over 3-year clearance period for creation and implementation of Program ((25+1+1)/3), plus average annual burden over 3-year clearance period for staff training ((4+1+1)/3), plus average annual burden over 3-year clearance period for preparing annual report ((4+1+1)/3)], for a total of 4,162,821 hours.

b. Low-Risk Entities

Entities that have a minimal risk of identity theft, but that have covered accounts, must develop a Program; however, they likely will only need a streamlined Program. FTC staff estimates that such entities will require one hour to create such a Program, with an annual recurring burden of five minutes. Training staff of low-risk entities to be attentive to future risks of identity theft should require no more than 10 minutes in an initial year, with an annual recurring burden of five minutes. FTC staff further estimates that these entities will require, initially, 10 minutes to prepare an annual report, with an annual recurring burden of five minutes.

The Rule does not require entities that determine that they do not have any covered accounts to create a written Program. Thus, such entities will not incur PRA burden.

Thus, the estimated hours burden for low-risk entities is as follows:

●1,622,029 low-risk entities[8] that have covered accounts subject to the FTC's jurisdiction at an average annual burden of approximately 37 minutes per entity [average annual burden over 3-year clearance period for creation and implementation of streamlined Program ((60+5+5)/3), plus average annual burden over 3-year clearance period for staff training ((10+5+5)/3), plus average annual burden over 3-year clearance period for preparing annual report ((10+5+5)/3)], for a total of 1,000,251 hours.

2. Estimated Hours Burden - Card Issuers Rule

As noted above, section 114 also requires financial institutions and creditors that issue credit or debit cards to establish policies and procedures to assess the validity of a change of address request, including notifying the cardholder or using another means of assessing the validity of the change of address. FTC staff estimates that the Rule affects as many as 52,914 card issuers. This is a revised estimate of the number of card issuers within the FTC's jurisdiction. In the PRA burden estimates set forth in the preamble to the Final Rule, the Commission stated that there were as many as 3,764 card issuers (consisting of state-chartered credit unions and retailers) within the FTC's jurisdiction. *See* 72 FR at 63742. This estimate understated the scope of the FTC's jurisdiction. The FTC has jurisdiction over additional categories of card issuers, including certain universities, money service businesses, and telecommunication companies.[9]

-FTC staff believes that most of these card issuers already have automated the process of notifying the cardholder or are using another means to assess the validity of the change of address, such that implementation will pose no further burden. Nevertheless, taking a conservative approach, FTC staff estimates that it will take each card issuer 4 hours to develop and implement policy and procedures to assess the validity of a change of address request for a total burden of 211,656 hours.

[6] In general, high-risk entities may provide consumer financial services or other goods or services of value to identity thieves such as telecommunication services or goods that are easily convertible to cash, whereas low-risk entities may do business primarily with other businesses or provide non-financial services or goods that are not easily convertible in cash, such as healthcare providers.

[7] This is the number of high-risk entities implementing section 114 as previously reported (266,602) in the preamble to the Rule, 72 FR at 63742, increased by the additional institutions (including insurance and investment companies, broker-dealers, and money service businesses) accounted for herein at note 4 and the accompanying text.

[8] This figure is derived from an analysis of a database of U.S. businesses based on NAICS codes for businesses that market goods or services to consumers or other businesses, reduced to the number of creditors subject to the FTC's jurisdiction (10,813,525), and reduced further by an estimated subset of which comprise anticipated low-risk entities not having covered accounts under the final rule (9,191,496).

[9] In addition to the 3,664 state-chartered credit unions and 100 retailers under the FTC's jurisdiction, as of 2007, there were 4,314 colleges and universities. *See* Digest of Education Statistics published by the National Center for Education Statistics (available at (*http://nces.ed.gov/programs/digest/d07/tables/dt07_255.asp*)). As of November 2008, there were 39,408 money service businesses. *See* Department of the Treasury Financial Crimes Enforcement Network MSB Registration List (available at (*http://www.msb.gov/pdf/msb_registration_list.pdf*)). Finally, as of November 2006, there were 5,428 telecommunication companies. *See* Federal Communications Commission, Industry Analysis and Technology Division, Wireline Competition Bureau, Trends in Telephone Service, August 2008, Table 5.3 (available at (*http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284932A1.pdf*)).

Thus, the total average annual estimated burden for Section 114 is 5,377,328 hours.

3. Estimated Cost Burden - Red Flags and Card Issuers Rules

FTC staff estimates labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. It is difficult to calculate with precision the labor costs associated with compliance with the Rule, as they entail varying compensation levels of management (*e.g.*, administrative services, computer and information systems, training and development) and/or technical staff (*e.g.*, computer support specialists, systems analysts, network and computer systems administrators) among companies of different sizes. FTC staff assumes that for all entities, professional technical personnel and/or management personnel will create and implement the Program, prepare the annual report, and train employees, at an hourly rate of $35.00.[10]

Based on the above estimates and assumptions, the total annual labor cost for all categories of covered entities under the Red Flags and Card Issuers Rules for Section 114 is $156,615,480 [4,162,821 hours + 1,000,251 hours + 211,656 hours) x $35.00)].

B. Section 315 - The Address Discrepancy Rule

As discussed above, the Rule's implementation of section 315 provides guidance on reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a CRA. Given the broad scope of users of consumer reports, it is difficult to determine with precision the number of users of consumer reports that are subject to the FTC's jurisdiction. As noted above, there are numerous small businesses under the FTC's jurisdiction, and there is no formal way to track them; moreover, as a whole, the entities under the FTC's jurisdiction are so varied that there are no general sources that provide a record of their existence. Nonetheless, FTC staff estimates that the Rule's implementation of section 315 affects approximately 1.66 million users of consumer reports subject to the FTC's jurisdiction.[11] Approximately 10,000 of these users will, in the course of their usual and customary business practices, have to furnish to CRAs an address confirmation upon notice of a discrepancy.[12]

FTC staff estimates that the average annual information collection burden during the three-year period for which OMB clearance is sought will be 776,334 hours. The estimated burden is $12,421,344.

1. Estimated Hours Burden

Although section 315 created a new obligation for CRAs to provide a notice of address discrepancy to users of consumer reports, prior to the FACT Act enactment, users of consumer reports could compare the address on the consumer report to the address provided by the consumer and discern for themselves any discrepancy. As a result, FTC staff believes that many users of consumer reports have developed methods of reconciling address discrepancies, and the following estimates represent the incremental amount of time users of consumer reports may require to develop and comply with the policies and procedures for when they receive a notice of address discrepancy.

Due to the varied nature of the entities under the FTC's jurisdiction, it is difficult to determine precisely the appropriate burden estimates. Nonetheless, FTC staff estimates that it would require an infrequent user of consumer reports no more than 16 minutes to develop and comply with the policies and procedures that it will employ when it receives a notice of address discrepancy, while a frequent user might require one hour. Similarly, FTC staff estimates that, during the remaining two years of clearance, it may take an infrequent user no more than one minute to comply with the policies and procedures it will employ when it receives a notice of address discrepancy, while a frequent user might require 45 minutes. Taking into account these extremes, FTC staff estimates that, during the first year, it will take users of consumer reports under the jurisdiction of the FTC an average of 38 minutes [the midrange between 16 minutes and 60 minutes] to develop and comply with the policies and procedures that they will employ when they receive a notice of address discrepancy. FTC staff also estimates that the average recurring burden for users of consumer reports to comply with the Rule will be 23 minutes [the midrange between one minute and 45 minutes].

Thus, for these 1.66 million entities, the average annual burden for each of them to perform these collective tasks will be 28 minutes [(38 + 23 + 23) ÷ 3]; cumulatively, 774,667 hours.

For the estimated 10,000 users of consumer reports that will additionally have to furnish to CRAs an address confirmation upon notice of a discrepancy, staff estimates that these entities will require 30 minutes to develop related policies and procedures. But, these 10,000 affected entities[13] likely will have automated the process of furnishing the correct address in the first year of a three-year PRA clearance cycle. Thus, allowing for 30 minutes in the first year, with no annual recurring burden in the second and third years of clearance, yields an average annual burden of 10 minutes per entity to furnish a correct address to a CRA, for a total of 1,667 hours.

2. Estimated Cost Burden

FTC staff assumes that the policies and procedures for compliance with the address discrepancy part of the Rule will be set up by administrative support personnel at an hourly rate of $16.[14] Based on the above estimates and assumptions, the total annual labor cost for the two categories of burden under section 315 is $12,421,344 [(774,667 hours + 1,667 hours) x $16.00].

C. Burden Totals for Sections 114 and 315

Cumulatively, then, estimated burden is 6,151,062 hours (5,374,728 hours for section 114 and 776,334 hours for section 315) and $169,036,824

[10] This estimate is based on (*http://www.bls.gov/ncs/ncswage2007.htm*) (National Compensation Survey: Occupational Earnings in the United States 2007, US Department of Labor released August 2008, Bulletin 2704, Table 3 (''Full-time civilian workers,'' mean and median hourly wages) for the various managerial and technical staff support exemplified above.

[11] This estimate is derived from an analysis of a database of U.S. businesses based on NAICS codes for businesses in industries that typically use consumer reports from CRAs described in the Rule, which total 1,658,758 users of consumer reports subject to the FTC's jurisdiction.

[12] Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions of 2003, Federal Trade Commission, 80 (Dec. 2004) available at (*http://www.ftc.gov/reports/facta/041209factarpt.pdf*).

[13] Staff further assumes that this estimate is representative of new entrants in any given three-year PRA clearance cycle.

[14] Based generally on the National Compensation Survey: Occupational Earnings in the United States, 2007, U.S. Department of Labor, Bureau of Labor Statistics released August 2008, Bulletin 2704, Table 3 (''Full-time civilian workers,'' mean and median hourly wages), available at (*http://www.bls.gov/ncs/ocs/sp/nctb0300.pdf*). Clerical estimates are derived from the above source data, applying roughly a mid-range of mean hourly rates for potentially applicable clerical types, *e.g.*, computer operators, data entry and information processing workers.

($156,615,480 and $12,421,344, respectively)[15] in associated labor cost.

Willard Tom

General Counsel.

[FR Doc. E9–20141 Filed 8–20–09: 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0080]

Federal Acquisition Regulation; Submission for OMB Review; Integrity of Unit Prices

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of reinstatement request for an information collection requirement regarding an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation, Regulatory Secretariat (VPR) will be submitting to the Office of Management and Budget (OMB) a request to reinstate a previously approved information collection requirement concerning Integrity of Unit Prices.

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 21, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503 and a copy to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Chambers, Procurement Analyst, Contract Policy Division, GSA, (202) 501–3221 or e-mail *Edward.chambers@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 15.408(f) and the clause at FAR 52.215–14, Integrity of Unit Prices, require offerors and contractors under Federal contracts that are to be awarded without adequate price competition to identify in their proposals those supplies which they will not manufacture or to which they will not contribute significant value. The policies included in the FAR are required by section 501 of Public Law 98–577 (for the civilian agencies) and section 927 of Public Law 99–500 (for DOD and NASA). The rule contains no reporting requirements on contracts with commercial items.

B. Annual Reporting Burden

Respondents: 1,000.
Responses per Respondent: 10.
Annual Responses: 10,000.
Hours per Response: 1 hour.
Total Burden Hours: 10,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F St., NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0080, Integrity of Unit Prices.

Dated: August 14, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–20174 Filed 8–20–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10174, CMS–10287 and CMS–R–305]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of the currently approved collection.

Title of Information Collection: Collection of Drug Event Data From Contracted Part D Providers for Payment.

Use: In December 2003, Congress enacted the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 referred to as the Medicare Modernization Act (MMA). The Medicare Prescription Drug Benefit program (Part D) was established by section 101 of the MMA and is codified in section 1860D–1 through 1860 D–41 of the Social Security Act. Effective January 1, 2006, the Part D program establishes an optional prescription drug benefit for individuals who are entitled to Medicare Part A and/or enrolled in Part B. Part D plans have flexibility in terms of benefit design. This flexibility includes, but is not limited to, authority to establish a formulary that limits coverage to specific drugs within each therapeutic class of drugs, and the ability to have a cost-sharing structure other than the statutorily defined structure (subject to certain actuarial tests). Coverage under the new prescription drug benefit is provided predominately through private at-risk prescription drug plans that offer drug-only coverage (PDPs), Medicare Advantage (MA) plans that offer integrated prescription drug and health care coverage (MA–PD plans) or through Cost Plans that offer prescription drug benefits.

The transmission of the data will be in an electronic format. The information users will be Pharmacy Benefit Managers (PBM), third party administrators and pharmacies and the PDPs, MA–PDs, Fallbacks and other plans that offer coverage of outpatient

[15] These figures correct mathematical errors that appeared in the related preceding **Federal Register** notice. 74 FR at 18712.

prescription drugs under the Medicare Part D benefit to Medicare beneficiaries. The data is used primarily for payment, and is used for claim validation as well as for other legislated functions such as quality monitoring, program integrity and oversight.

Form Number: CMS–10174 (OMB#: 0938–0982).

Frequency: Reporting—Monthly.

Affected Public: Business or other for-profits and not-for-profit institutions.

Number of Respondents: 747.

Total Annual Responses: 947,881,770.

Total Annual Hours: 1896.

(For policy questions regarding this collection contact Bobbie Knickman at 410–786–4161. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New collection.

Title of Information Collection: Medicare Quality of Care Complaint Form.

Use: In accordance with Section 1154(a)(14) of the Social Security Act, Quality Improvement Organizations (QIOs) are required to conduct appropriate reviews of all written complaints submitted by beneficiaries concerning the quality of care received. The Medicare Quality of Care Complaint Form will be used by Medicare beneficiaries to submit quality of care complaints. This form will establish a standard form for all beneficiaries to utilize and ensure pertinent information is obtained by QIOs to effectively process these complaints.

Form Number: CMS–10287 (OMB#: 0938–New).

Frequency: Reporting—on occasion.

Affected Public: Individuals or households.

Number of Respondents: 3,500.

Total Annual Responses: 3,500.

Total Annual Hours: 583.

(For policy questions regarding this collection contact Tom Kessler at 410–786–1991. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: External Quality Review Protocols.

Use: The results of Medicare reviews, Medicare accreditation services, and Medicaid external quality reviews will be used by States in assessing the quality of care provided to Medicaid beneficiaries by managed care organizations and to provide information on the quality of care provided to the general public upon request.

Form Number: CMS–R–305 (OMB#: 0938–0786).

Frequency: Reporting—Yearly.

Affected Public: State, Local or Tribal Governments.

Number of Respondents: 40.

Total Annual Responses: 40.

Total Annual Hours: 520,000.

(For policy questions regarding this collection contact Gary B. Jackson at 410–786–1218. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *September 21, 2009:*

OMB, Office of Information and Regulatory Affairs, *Attention:* CMS Desk Officer, *Fax Number:* (202) 395–6974, *E-mail: OIRA_submission@omb.eop.gov.*

Dated: August 14, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–20127 Filed 8–20–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10198]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Creditable Coverage Disclosure to CMS On-Line Form and Instructions; *Use:* Most entities that currently provide prescription drug benefits to any Medicare Part D eligible individual must disclose to the CMS whether the prescription drug benefit that they offer is creditable. The disclosure is required to be provided annually and upon any change that affects whether the coverage is creditable prescription drug coverage. CMS released a Disclosure to CMS Guidance Paper and a disclosure to CMS notification on-line form in January 2006.

Section 1860D–1 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) and implementing regulations at 42 CFR 423.56 requires that entities that offer prescription drug benefits under any of the types of coverage described in 42 CFR 423.56(b) provide a disclosure of creditable coverage to CMS informing us whether such coverage meets the actuarial requirements specified in guidelines provided by CMS. *Form Number:* CMS–10198 (OMB#: 0938–1013); *Frequency:* Reporting—Yearly and Semi-annually; *Affected Public:* Federal Government, Business or other for-profits and not-for-profit institutions, and State, Local, or Tribal Governments; *Number of Respondents:* 87,500; *Total Annual Responses:* 87,500; *Total Annual Hours:* 7,291.7. (For policy questions regarding this collection contact James Mayhew at 410–786–9244. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration,

comments and recommendations must be submitted in one of the following ways by *October 20, 2009:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, *Attention:* Document Identifier/OMB Control Number (CMS–10198), Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 14, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–20128 Filed 8–20–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0391]

Clinical Investigator Training Course

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA's) Office of Critical Path Programs and the Clinical Trials Transformation Initiative (CTTI) are co-sponsoring a 3-day training course for clinical investigators on scientific, ethical, and regulatory aspects of clinical trials. This training course is intended to provide investigators with expertise in the design, conduct, and analysis of clinical trials; improve the quality of clinical trials; and enhance the safety of trial participants. Senior FDA staff will communicate directly with clinical investigators on issues of greatest importance for successful clinical research.

DATES: The training course will be held on November 16 and 17, 2009, from 8 a.m. to 5 p.m. and on November 18, 2009, from 8 a.m. to 3:30 p.m.

ADDRESSES: The course will be held at the National Labor College, 10000 New Hampshire Ave., Silver Spring, MD 20903.

FOR FURTHER INFORMATION CONTACT: Devota DeMarco, Office of Critical Path Programs (HF–18), Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3605, *Devota.DeMarco@fda.hhs.gov*; or

Nancy Stanisic, Office of Critical Path Programs (HF–18), Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1660, *Nancy.Stanisic@fda.hhs.gov*.

Registration: Register by November 2, 2009, at the registration/information Web site at *https://www.trials transformation.org/fda-clinical-investigator-training-course/* or by fax at 919–660–1769. Registration materials, payment procedures, accommodation information, and a detailed description of the course can be found at the registration/information Web site. The registration fee is $300 per person. The fee includes course materials and onsite lunch. Early registration is recommended because seating is limited. There will be no onsite registration. If you need special accommodations due to a disability, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

Clinical trial investigators play a critical role in the development of medical products. They bear the responsibility for ensuring the safe and ethical treatment of study subjects and for acquiring adequate and reliable data to support regulatory decisions. This course is intended to assist clinical investigators in understanding what preclinical and clinical information is needed to support the investigational use of medical products, as well as the scientific, regulatory, and ethical considerations involved in the conduct of clinical trials. The course will cover a wide variety of key topics, including material on novel safety concerns, adverse event monitoring, compliance with the legal and ethical obligations of clinical research, and acceptable scientific and analytic standards in the design and conduct of clinical studies. The faculty will include a diverse representation of senior FDA staff, enabling FDA to communicate directly with clinical investigators on issues of greatest importance for successful clinical research.

II. Description of the Training Course

A. Purpose

The training course is designed to provide clinical investigators with an overview of the following topics:

- The essential toxicological, pharmacological, and manufacturing data to support investigational use in humans;
- Fundamental issues in the design and conduct of clinical trials;
- Statistical and analytic considerations in the interpretation of trial data;
- Appropriate safety evaluation during studies; and
- The ethical considerations and regulatory requirements for clinical trials.

In addition, the course should:

- Foster a cadre of clinical investigators with knowledge, experience, and commitment to investigational medicine;
- Promote communication between clinical investigators and FDA;
- Enhance investigators' understanding of FDA's role in experimental medicine; and
- Improve the quality of data while enhancing subject protection in the performance of clinical trials.

B. Proposed Agenda

The course will be conducted over 3 days and will comprise approximately 26 lectures, each lasting between 30 and 45 minutes. Two sessions of case studies will be included for which participants will be expected to do preparatory reading and answer questions. The course will be presented mainly by senior FDA staff, with guest lecturers presenting selected topics.

On day one, the course will address the role of FDA in clinical studies, regulatory considerations for clinical trials, and review of the material generally appearing in an ''investigator's brochure,'' i.e., the preclinical information (toxicology, animal studies, and chemistry/manufacturing information) that supports initial clinical trials in humans. Presentations will also discuss the role of clinical pharmacology in early clinical studies and how this information is used in the design of subsequent studies. Day two will include discussions of scientific, statistical, ethical, and regulatory aspects of clinical studies. Day three will include discussions of safety assessment in clinical trials, including hepatic and cardiovascular safety, approaches to special populations (e.g., pregnant women and pediatrics), and the role of personalized medicine and new scientific techniques in medical product development.

C. Target Audience

The course is targeted at healthcare professionals responsible for, or involved in, the conduct and/or design of clinical trials.

Dated: August 14, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20084 Filed 8–20–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0395]

Draft Guidance for Industry, User Facilities, and Food and Drug Administration Staff; eMDR—Electronic Medical Device Reporting; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''eMDR—Electronic Medical Device Reporting.'' The draft guidance document addresses general issues related to the submission of postmarket medical device reports (MDRs) in electronic format. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to require that manufacturers, importers, and user facilities submit most MDRs to the agency in electronic format.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by November 19, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''eMDR—Electronic Medical Device Reporting'' to the Division of Small Manufacturers, International, and Consumer Assistance , Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Building 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Howard Press, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Building 66, rm. 3320, Silver Spring, MD 20993–0002, 301–796–6087.

SUPPLEMENTARY INFORMATION:

I. Background

The draft guidance document provides information related to the submission of postmarket MDRs in electronic format, including technical information. The information provided in the draft guidance document is intended to help reporters prepare the MDR for electronic submission in a way that would satisfy the requirements of FDA's proposed electronic Medical device reporting regulation that is published elsewhere in this issue of the **Federal Register**.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized will represent the agency's current thinking on electronic medical device reporting (eMDR). It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive an electronic copy of ''eMDR—Electronic Medical Device Reporting'' you may either send an e-mail request to *dsmica@fda.hhs.gov* or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1679 to identify the guidance you are requesting.

The Center for Devices and Radiological Health (CDRH) maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.regulations.gov*.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to proposed collections of information described in FDA's proposed rule on medical device reporting, electronic submission requirements, published elsewhere in this issue of the **Federal Register**. The proposed collections of information in the proposed rule are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). In accordance with the proposed medical device regulation, medical device manufacturers, importers, and user facilities would be required to submit MDRs to FDA, to maintain records, and may also seek exemption or variance from these requirements. Manufacturers, importer, and user facilities are currently submitting paper MDR reports on FDA Form 3500 A, for which the existing information collection requirements under 21 CFR part 803 are approved under OMB control number 0910–0437. The changes to the burden associated with this proposed rule have been sent to OMB as a revision to OMB control number 0910–0437 for review under section 307(d) of the PRA.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 11, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–19681 Filed 8–20–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0346]

Draft Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Tomatoes; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of August 3, 2009 (74 FR 38438). The document announced the availability of a draft guidance entitled ''Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Tomatoes.'' The document was published with an incorrect date for submitting written or electronic comments on the draft guidance. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2024.

SUPPLEMENTARY INFORMATION: In FR Doc. E9–18453, appearing on page 38438 in the **Federal Register** of August 3, 2009, the following correction is made:

1. On page 38438, in the third column, in the ''**DATES**'' section, in the eighth line, ''October 2, 2009'' is corrected to read ''November 2, 2009''.

Dated: August 17, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20103 Filed 8–20–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0347]

Draft Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Melons; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of August 3, 2009 (74 FR 38437). The document announced the availability of a draft guidancet entitled ''Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Melons.'' The document was published with an incorrect date for submitting written or electronic comments on the draft guidance. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Willette Crawford, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1111.

SUPPLEMENTARY INFORMATION: In FR Doc. E9–18452, appearing on page 38437 in the **Federal Register** of Wednesday, August 3, 2009, the following correction is made:

On page 38437, in the third column, in the **DATES** section, in the eighth line, ''October 2, 2009'' is corrected to read ''November 2, 2009''.

Dated: August 17, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20102 Filed 8–20–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0348]

Draft Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Leafy Greens; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of August 3, 2009 (74 FR 38439). The document announced the availability of a draft guidance entitled ''Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Leafy Greens.'' The document was published with an incorrect date for submitting written or electronic comments on the draft guidance. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Amy Green, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2025.

SUPPLEMENTARY INFORMATION: In FR Doc. E9–18451, appearing on page 38439 in the **Federal Register** of August 3, 2009, the following correction is made:

1. On page 38439, in the third column, in the ''**DATES**'' section, in the eighth line, ''October 2, 2009'' is corrected to read ''November 2, 2009''.

Dated: August 17, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20101 Filed 8–20–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; ARRA Studies Involving Human Embryonic Stem Cells.

Date: August 28, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: David W Miller, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: August 13, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20152 Filed 8–20–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting; Moving Into the Future—New Dimensions and Strategies for Women's Health Research for the National Institutes of Health

Notice is hereby given that the Office of Research on Women's Health (ORWH), Office of the Director, National Institutes of Health, Department of Health and Human Services, in collaboration with Northwestern University's Feinberg School of Medicine and Northwestern Memorial Hospital, will convene a public hearing and scientific workshop on October 14–16, 2009, at Northwestern University, Thorne Auditorium, Arthur Rubloff Building, Chicago, Illinois.

Purpose of the Meeting

With rapid advances in science and wider global understanding of women's health and sex/gender contributions to well-being and disease, the purpose of the meeting is to ensure that NIH continues to support cutting-edge women's health research that is based upon the most advanced techniques and methodologies. The meeting format is designed to promote an interactive discussion involving leading scientists, advocacy groups, public policy experts, health care providers, and the general public. The Chicago meeting is the fourth in a series that will be convened throughout the Nation to help the ORWH and NIH move into the next decade of women's health research.

As science and technology advance and fields such as computational biology demonstrate the power of interdisciplinary research, it remains critical for sex and gender factors to be integrated into broad experimental methodologies and scientific approaches across the lifespan. Biomedical and behavioral research are also necessary to understand how cultural, ethnic, and racial differences influence the causes, diagnosis, progression, treatment, and outcome of disease among different populations, including women of diverse geographic locations and socioeconomic backgrounds. Furthermore, the fact that there are health differences among diverse populations of women remains a critical area in need of continued focus and attention.

The ORWH challenges all meeting attendees to assist the NIH in defining the women's health research agenda of the future by thinking beyond traditional women's health issues. The ORWH and NIH ask meeting participants to consider creative strategies to identify areas of research that are best poised for advancement, identify innovative ways in which persistent issues of health and disease can be addressed, and explore new horizons of scientific concepts and investigative approaches. Attention also needs to be paid to new areas of science application, new technologies, and continuing basic science investigations. Clinical questions that are not currently the focus of research priorities need to be considered to ensure that women's health research is optimally served and that the ORWH can continue to provide leadership for the benefit of women's health, nationally and internationally.

Meeting Format

The meeting will consist of public testimony, scientific panels and seven concurrent scientific working groups. Specifically, on October 14, individuals representing a full spectrum of organizations interested in biomedical and behavioral research on women's health issues will have an opportunity to provide public testimony from 2 to 6 p.m. On October 15 and 16, plenary sessions will focus on the intersection of health care, public policy, and biomedical research; on emerging issues and trends in health care; and on research paradigms of the future. The seven concurrent afternoon sessions on October 15 will focus on a range of research areas, including preventive heath and special populations; clinical trials/research; new technologies, bioengineering, imaging; genetics/epigenetics; sex hormones and disease; neuroscience; and women in science careers. On October 16, the morning session will be devoted to reports by the working group co-chairs regarding the recommendations emerging from working group deliberations on the previous day. The meeting will adjourn at 12:45 p.m. on October 16.

Public Testimony

The ORWH invites individuals with an interest in research related to women's health to provide written and/or oral testimony on these topics and/or on issues related to the sustained advancement of women in various biomedical careers. Due to time constraints, only one representative from an organization or professional specialty group may give oral testimony. Individuals not representing an organized entity but a personal point of view are similarly invited to present written and/or oral testimony. A letter of intent to present oral testimony is necessary and should be sent electronically to *http://www.orwhmeetings.com/movingintothefuture/* or by mail to Ms. Jory Barone, Educational Services, Inc., 4350 East-West Highway, Suite 1100, Bethesda, MD 20814, no later than October 4, 2009. The date of receipt of the communication will establish the order of those selected to give oral testimony at the October meeting.

Those wishing to present oral testimony are also asked to submit a written form of their testimony that is limited to a maximum of 10 pages, double spaced, 12 point font, and should include a brief description of the organization. Electronic submission to the above Web site is preferred; however, for those who do not have access to electronic means, written testimony, bound by the restrictions previously noted and postmarked no later than October 4, 2009, can be mailed to Ms. Jory Barone at the above address. All written presentations must meet the established page limitations. Submissions exceeding this limit will not be accepted and will be returned. Oral testimony of this material at the meeting will be limited to no more than 5–6 minutes in length.

Because of time constraints for oral testimony, testifiers may not be able to present the complete information as it is contained in their written form submitted for inclusion in the public record for the meeting. Therefore, testifiers are requested to summarize the major points of emphasis from the written testimony, not to exceed 6 minutes of oral testimony. Those individuals or organizations that have indicated they will present oral testimony at the meeting in Chicago will be notified prior to the meeting regarding the approximate time for their oral presentation.

Individuals and organizations wishing to provide written statements only should send a copy of their statements, electronically or by mail, to the above Web site or address by October 4, 2009. Written testimony received by that date will be made available at the October 14–16 meeting. Logistics questions related to the meeting should be addressed to Ms. Jory Barone at ESI, while program-specific questions should be addressed to Dr. Jody K. Hirsch at the Feinberg School of

Medicine, Chicago, Illinois, at telephone number 312–503–3659 or e-mail address *jkhirsch@northwestern.edu*.

At the conclusion of the regional meetings, the ORWH will hold a meeting at the NIH to summarize the deliberations from the regional conferences. The resulting report to the ORWH and the NIH will ensure that women's health research in the coming decade continues to support a vigorous research agenda incorporating the latest advances in technology and cutting-edge science.

Dated: August 13, 2009.

Raynard S. Kington,

Acting Director, National Institutes of Health.

[FR Doc. E9–20149 Filed 8–20–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: October 20–22, 2009.

Time: October 20, 2009, 2 p.m. to 6 p.m.

Agenda: Welcome, Overview of the NCI Advanced Therapeutics Platform, Expert Panel on NCI Therapeutics Platform.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Time: October 21, 2009, 8:30 a.m. to 5:30 p.m.

Agenda: Gaining Community Input on NCI Therapeutics Platform, Communicating with the Community About the NCI Therapeutics Platform, Advocates in Research Working Group Discussion, NCI National Outreach Network Discussion.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Time: October 22, 2009, 8:30 a.m. to 1 p.m.

Agenda: Communicating with the Community about the NCI Therapeutics Platform (cont'd), Engaging the Community Around the NCI Therapeutics Platform, Discussion with NCI Director.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Benjamin Carollo, MPA, Advocacy Relations Manager, Office of Advocacy Relations, Building 31, Room 10A30, 31 Center Drive, MSC 2580, National Cancer Institute, NIH, DHHS, Bethesda, MD 20892–2580. 301–496–0307. *carollob@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page:*http://deainfo.nci.nih.gov/advisory/dclg/dclg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20170 Filed 8–20–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council.

Date: September 15–16, 2009.

Open: September 15, 2009, 8:30 a.m. to 5 p.m.

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Open: September 16, 2009, 8:30 a.m. to 10:30 a.m.

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: September 16, 2009, 10:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Gwen W Collman, PHD, Interim Director, Division of Extramural Research & Training, National Institutes of Health, Nat. Inst. of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.niehs.nih.gov/dert/c-agenda.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20168 Filed 8–20–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: September 22–23, 2009.

Open: September 22, 2009, 9 a.m. to 12 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6C, Room 6, Bethesda, MD 20892.

Closed: September 22, 2009, 1 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6C, Room 6, Bethesda, MD 20892.

Closed: September 23, 2009, 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6C, Room 6, Bethesda, MD 20892.

Contact Person: Mary E. Kerr, FAAN, RN, Ph.D., Deputy Director, National Institute of Nursing, National Institutes of Health, 31 Center Drive, Room 5B–05, Bethesda, MD 20892–2178, 301/496–8230, *kerrme@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/ninr/a_advisory.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS).

Dated: August 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20166 Filed 8–20–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Stroke Genetics.

Date: August 28, 2009.

Time: 10:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division Of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC9529, Bethesda, MD 20852, (301) 435–6033, *rajarams@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20164 Filed 8–20–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel. Quantitative Imaging for Evaluation of Responses to Cancer Therapies.

Date: October 22, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Kenneth L. Bielat, Ph.D., Scientific Review Officer, Special Review Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892–8329, 301–496–7576, *bielatk@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer

Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20163 Filed 8–20–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee I—Career Development.

Date: October 5–6, 2009.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert Bird, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8113, Bethesda, MD 20892–8328. 301–496–7978. *birdr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20161 Filed 8–20–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NIH-Supported Centers for Population Health and Health Disparities.

Date: September 21–23, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott North, 5701 Marinelli Road, Rockville, MD 20852.

Contact Person: Lalita D. Palekar, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7141, Bethesda, MD 20892, 301–496–7575, *palekarl@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Innovative and Applied Emerging Technologies in Biospecimen Science.

Date: November 4–5, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Viatcheslav A. Soldatenkov, MD, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Excecutive Blvd Room 8057, Bethesda, MD 20892–8329, 301–451–4758, *soldatenkovv@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20160 Filed 8–20–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, October 14, 2009, 8 a.m. to October 15, 2009, 6 p.m., Hilton Washington DC/Rockville Executive Meeting C, 1750 Rockville Pike, Rockville, MD, 20852 which was published in the **Federal Register** on July 17, 2009, 74FR34765.

The name of the committee on this **Federal Register** Notice has been amended to read 'Epidemiology, Prevention, Control & Population Sciences' and not as otherwise stated. The meeting is closed to the public.

Dated: August 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20158 Filed 8–20–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel Sleep and Age.

Date: September 18, 2009.

Time: 12:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Jeannette L. Johnson, Ph.D., Scientific Review Officer, National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *JOHNSONJ9@NIA.NIH.GOV.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20156 Filed 8–20–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Organization, Functions, and Delegations of Authority

Part G, Indian Health Service, Proposed Functional Statement

Office of Direct Service and Contracting Tribes (ODSCT) (GABI)

(1) Provides Agency leadership and advocacy for Direct Service Tribes (DST) in the development of health policy, program management, budget formulation and resource allocation and advises the IHS Director and senior management on DST issues and concerns; (2) provides Agency leadership concerning policy development and Agency functions and responsibilities associated with self-determination contracting (Title I of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended), monitors Agency compliance with self-determination policies, administrative procedures and guidelines, and advises the Director, IHS, and senior management on activities and issues related to self-determination contracting; (3) provides Agency leadership in the development of contract support cost (CSC) policy, and fulfills national operational responsibilities, with respect to the CSC program administered by IHS; (4) provides Agency leadership with respect to policy development and issues concerning new Federally recognized/restored Tribes; (5) administers a national statutorily mandated grant program designed to assist Tribes and Tribal organizations in beginning and/or expanding self-determination activities; (6) serves as the principal liaison with DST Tribal leaders, the Direct Service Tribes Advisory Committee (DSTAC), national Indian or Tribal organizations, inter-Tribal consortiums, Area health boards, and Service Unit health boards; (7) coordinates quarterly DSTAC and annual DST meetings to provide a forum for DST Tribal leaders to express their concerns and primary issues relating to direct health care delivery by the IHS; (8) coordinates and facilitates meetings between Direct Service and Title I contracting Tribal delegations and the Office of the Director at Headquarters, during national meetings and at other locations as required; (9) maintains a central database of contact information for Tribal leaders, health directors, health programs, etc.; (10) assures that Indian Tribes and Tribal organizations are informed regarding pertinent health policy and program management issues and that consultation, with participation by Indian Tribes and Tribal organizations, occurs during the development of IHS policies and Agency decision making; (11) provides technical assistance and support to IHS Area Offices and to Tribes in administering health programs; and (12) participates in cross-cutting issues and processes including but not limited to emergency preparedness/security, budget formulation, self-determination issues, Tribal shares computations, and resolution of audit findings as needed.

This reorganization shall be effective on August 14, 2009.

Dated: August 13, 2009.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. E9–20056 Filed 8–20–09; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0352]

Prescription Drug User Fee Act IV Information Technology Assessment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: In the last decade, the Food and Drug Adminstration (FDA) has achieved great success in reforming and modernizing its regulatory processes and responsibilities as a result of changes and improvements driven by the requirements of the Prescription Drug User Fee Act (PDUFA), the 1997 FDA Modernization Act (FDAMA), and other legislation. PDUFA was reauthorized by the Food and Drug Administration Amendments Act of 2007, Title I, Prescription Drug User Fee Amendments of 2007 (PDUFA IV). FDA plans to make even greater progress during the PDUFA IV timeframe (Fiscal Years 2008 through 2012), building on the foundation established in previous years. The additional resources provided by user fees, when combined with appropriations, have enabled the FDA to modernize its information technology infrastructure and begin a monumental transformation from a paper-based to an electronic work environment.

As part of the PDUFA IV commitment, FDA published the PDUFA IV Information Technology (IT) Plan for comment to allow the public to provide feedback as FDA moves towards a fully electronic standards-based submission and review environment. FDA reviewed the comments, updated the plan, and published the updated version in June 2008 (73 FR 36880; June 30, 2008).

Under the PDUFA IV IT Plan an assessment of progress against the plan is conducted on an annual basis. The most recent report, which is available at *http://www.fda.gov/oc/pdufa/*, reflects the current assessment of the PDUFA IV IT Plan. The report contains four columns. The first three columns were previously published as part of the original plan. The last column, labeled ''Current Status'' provides details of the activities for each project assessed. The next assessment will be published in November 2009.

More information on the PDUFA program is available at *http://www.fda.gov/oc/pdufa/*.

DATES: Submit written or electronic comments on the assessment at any time. These comments will be considered as the agency makes annual updates to the plan each fiscal year.

ADDRESSES: Submit written requests for single copies of the IT Assessment to the Office of the Chief Information Officer (HFA–080), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the IT Assessment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the assessment.

FOR FURTHER INFORMATION CONTACT: Gina Kiang, Office of the Chief Information Officer, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–255–6702

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of the IT Assessment entitled ''Prescription Drug User Fee Act (PDUFA) IV Information Technology Assessment.'' This Assessment is intended to provide regulated industry and other stakeholders with information on FDA's progress toward the goals set out in the PDUFA IV IT Plan. As referenced in that plan published in May 2008, Section 7.2, B. Communications and Technical Interactions, 3.b., ''FDA will conduct an annual assessment of progress against the IT plan and publish on the FDA Web site a summary of the assessment within 2 months after the close of each fiscal year.''

II. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov* and at *http://www.fda.gov/oc/pdufa*.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*

Dated: August 12, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–20083 Filed 8–20–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–174]

Recent Coal Dust Particle Size Surveys and the Implications for Mine Explosions

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of draft publication available for public comment.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following draft Publication available for public comment entitled ''Recent Coal Dust Particle Size Surveys and the Implications for Mine Explosions.'' The document and instructions for submitting comments can be found at *http://www.cdc.gov/niosh/review/public/174/default.html.*

Public Comment Period: Comment period from August 31, 2009 to September 30, 2009.

ADDRESSES: Written comments may be submitted to the NIOSH Docket Office, Robert A. Taft Laboratories, 4676 Columbia Parkway, MS–C34, Cincinnati, Ohio 45226. All material submitted to the NIOSH should reference docket number NIOSH–174 and must be submitted by September 30, 2009 to be considered by the Agency. All electronic comments should be formatted as Microsoft Word. In addition, comments may be sent via e-mail to *nioshdocket@cdc.gov* or by facsimile to (513) 533–8285. A complete electronic docket containing all comments submitted will be available on the NIOSH Web page at *http://www.cdc.gov/niosh/docket,* and comments will be available in writing by request. NIOSH includes all comments received without change in the electronic docket, including any personal information. All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, Room 111, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533–8611.

Background: Spreading rock dust in bituminous coal mines is the primary means of reducing the explosion potential of coal dust that collects during the normal workings of an active coal mine. Accordingly, guidelines have been established by the Mine Safety and Health Administration (MSHA) about the relative proportion of rock dust that needs to be present in both intake and return airways. Specifically, current MSHA regulations require that intake airways contain at least 65% incombustible content and return airways contain at least 80%. The higher limit for return airways was set in large part because fine ''float'' coal dust (100% < 200 mesh or 75 μm) tends to collect in these airways. MSHA inspectors routinely monitor rock dust inerting efforts by collecting dust samples and measuring the percentage of total incombustible content (TIC). These regulations were based on two important findings: a survey of coal dust particle size that was performed in the 1920s and large-scale explosion tests conducted in the U.S. Bureau of Mines' Bruceton Experimental Mine (BEM) using dust particles of that size range to determine the amount of inerting material required to prevent explosion propagation.

Mining technology and practices have changed considerably since the 1920s when the original coal dust particle survey was performed. Also, it has been shown conclusively that as the average size of coal dust particles decreases, the explosion hazard increases. Given these factors, the National Institute for Occupational Safety and Health (NIOSH) and MSHA conducted a joint survey to determine the range of coal particle sizes found in dust samples collected from intake and return airways of U.S. coal mines. Results from this survey show that the coal dust found in mines today is much finer than in mines of the 1920s, presumably due to increased automation and a greater reliance on mining machinery.

In light of this recent comprehensive dust survey, NIOSH conducted additional large-scale explosion tests at the Lake Lynn Experimental Mine (LLEM) to determine the degree of rock dusting necessary to abate explosions using Pittsburgh seam coal dust blended as 38% < 200 mesh and referred to as medium-sized dust. Explosion tests indicate that medium-sized coal dust required 76.4% TIC to prevent explosion propagation. Even the coarse coal dust (20% < 200 mesh or 75 μm) representative of samples obtained from mines in the 1920s required approximately 68% TIC to be rendered inert, a level higher than the current regulation of 65% TIC. In return airways, the particle size survey revealed that the average dust particle size is roughly the same as float coal

dust as defined in the Coal Mine Health and Safety Act of 1969.

Given the results of the recent coal dust particle size survey and large-scale explosion tests, NIOSH recommends a new standard of 80% TIC be required in the intake airways of bituminous coal mines. The survey results indicate that the current requirement of 80% TIC in return airways is still sufficient and appropriate. In addition, NIOSH agrees with and endorses an earlier recommendation that new rock dusting standards should be based on a worst-case scenario (using high volatile coals) with no relaxation for lower volatile coals.

FOR FURTHER INFORMATION CONTACT: Dr. Jeff Kohler, NIOSH Associate Director for Mining and Construction, 626 Cochrans Mill Road, Pittsburgh, PA 15236, (412) 386–6544, E-mail *jkohler@cdc.gov.*

Reference: Web address for this publication: *http://www.cdc.gov/niosh/review/public/174/pdfs/RD-inertingOutToExtReview.pdf.*

Dated: August 14, 2009.

Christine M. Branche,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. E9–20205 Filed 8–20–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HOMELAND SECURITY

Science and Technology (S&T) Directorate

[Docket No. DHS–2009–0107]

Submission for Review; Information Collection Request for the DHS S&T SAFETY Act Program

AGENCY: Science and Technology Directorate, DHS.

ACTION: 30-day Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) invites the general public to comment on the following data collection forms for the DHS Science and Technology Directorate's Support Anti-Terrorism by Fostering Effective Technologies (SAFETY) Act Program: Registration of a Seller of an Anti-Terrorism Technology (DHS Form 10010), Request for a Pre-Application Consultation (DHS Form 10009), Notice of License of Qualified Anti-Terrorism Technology (DHS Form 10003), Application for Modification of SAFETY Act Benefits (DHS Form 10002), Request for Transfer of SAFETY Act Benefits (DHS Form 10001), Application for SAFETY Act Renewal (DHS FORM 10057), Application for SAFETY Act Developmental Testing and Evaluation (DT&E) Designation (DHS Form 10006), Application for SAFETY Act Designation (DHS Form 10008), Application for SAFETY Act Certification (DHS Form 10007), Application for SAFETY Act Block Designation (DHS Form 10005), and Application for SAFETY Act Block Certification (DHS Form 10004).

In 2002, The Support Anti-Terrorism by Fostering Effective Technologies (SAFETY) Act (6 CFR part 25) was enacted as part of the Homeland Security Act of 2002, Public Law 107–296. The SAFETY Act program promotes the development and use of anti-terrorism technologies that will enhance the protection of the nation and provides risk management and litigation management protections for sellers of Qualified Anti-Terrorism Technology (QATT) and others in the supply and distribution chain.

The Department of Homeland Security, Science & Technology Directorate (DHS S&T) currently has approval to collect information for the implementation of the SAFETY Act program until January 31, 2010. With this notice, DHS S&T seeks approval to renew this information collection for continued use after this date. The SAFETY Act program requires the collection of this information in order to evaluate and qualify Anti-Terrorism Technologies, based on the economic and technical criteria contained in the SAFETY Act Final Rule, for protection in accordance with the Act, and therefore encourage the development and deployment of new and innovative anti-terrorism products and services.

This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until October 20, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Desk Officer for the Department of Homeland Security, Science & Technology Directorate, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to 202–395–5806. Please include docket number [DHS–2009–0107] in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Michael Bowerbank, 202–254–6895.

SUPPLEMENTARY INFORMATION: DHS S&T provides a secure Web site, accessible through *http://www.SAFETYAct.gov*, through which the public can learn about the program, submit applications for SAFETY Act protections, submit questions to the Office of SAFETY Act Implementation (OSAI), and provide feedback. The data collection forms have standardized the collection of information that is both necessary and essential for the DHS OSAI.

Overview of Information Collection:

(1) *Type of Information Collection:* Existing information collection.

(2) *Title of the Form/Collection:* SAFETY Act Program.

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* DHS Science & Technology Directorate, DHS Forms 10001, 10002, 10003, 10004, 10005, 10006, 10007, 10008, 10009, 10010, and 10057.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Business entities, Associations, and State, Local and Tribal Government entities. Applications are reviewed for benefits, technology/program evaluations, and regulatory compliance.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 950.

b. *An estimate of the time for an average respondent to respond:* 18.2 burden hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17,300 burden hours.

Dated: August 15, 2009.

Gregg Piermarini,

Acting Chief Information Officer, Science and Technology Directorate, Department of Homeland Security.

[FR Doc. E9–20077 Filed 8–20–09; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2009–0100]

The National Infrastructure Advisory Council

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Committee Management; Notice of Federal Advisory Council Meeting.

SUMMARY: The National Infrastructure Advisory Council (NIAC) will meet on Tuesday, September 8, 2009, at the J.W.

Marriott's Salons I and II, 1331 Pennsylvania Avenue, Washington, DC 20004.

DATES: The NIAC will meet Tuesday, September 8, 2009, from 1:30 p.m. to 4:30 p.m. Please note that the meeting may close early if the committee has completed its business. For additional information, please consult the NIAC Web site, *http://www.dhs.gov/niac*, or contact Matthew Sickbert by phone at 703–235–2888 or by e-mail at *Matthew.Sickbert@associates.dhs.gov*.

ADDRESSES: The meeting will be held at the J.W. Marriott's Salon I and II, 1331 Pennsylvania Avenue, Washington, DC 20004. While we will be unable to accommodate oral comments from the public, written comments may be sent to Nancy J. Wong, Department of Homeland Security, National Protection and Programs Directorate, Washington, DC 20528. Written comments should reach the contact person listed no later than September 1, 2009. Comments must be identified by Docket No. DHS–2009–0100 and may be submitted by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: matthew.sickbert@associates.dhs.gov. Include the docket number in the subject line of the message.

Fax: 703–235–3055.

Mail: Nancy J. Wong, Department of Homeland Security, National Protection and Programs Directorate, Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the NIAC, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy J. Wong, NIAC Designated Federal Officer, Department of Homeland Security, Washington, DC 20528; telephone 703–235–2888.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The NIAC shall provide the President through the Secretary of Homeland Security with advice on the security of the critical infrastructure sectors and their information systems.

The NIAC will meet to address issues relevant to the protection of critical infrastructure as directed by the President. The September 8, 2009, meeting will include the final report from the Critical Infrastructure Resilience Working Group.

The meeting agenda is as follows:

I. Opening of Meeting
II. Roll Call of Members
III. Opening Remarks and Introductions
IV. Approval of July 2009 Minutes
V. Working Group Final Presentation and Deliberation of Final Report
  a. The Critical Infrastructure Resilience Working Group
VI. Continuing Business
VII. Closing Remarks
VIII. Adjournment

Procedural

While this meeting is open to the public, participation in the NIAC deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the NIAC Secretariat at 703–235–2888 as soon as possible.

Signed: August 11, 2009.

Nancy J. Wong,

Designated Federal Officer, National Infrastructure Advisory Council.

[FR Doc. E9–20079 Filed 8–20–09; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5345–N–01]

Notice of HUD-Held Noncompetitive Sales of Assets

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sales of two portfolios of Secretary-held mortgage loans to units of Local Government using Section 237 of Fiscal Year 2009 Omnibus Appropriations Act.

SUMMARY: This notice announces HUD's intention to sell certain subsidized and nonsubsidized multifamily and healthcare mortgage loans in noncompetitive sales to units of State and Local Government.

DATES: Acceptance of pricing and closing of the sale of the assets.

FOR FURTHER INFORMATION CONTACT: John Lucey, Deputy Director, Asset Sales Office, Room 3136, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone 202–708–2625, extension 3927. Hearing- or speech-impaired individuals may call 202–708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell certain subsidized and nonsubsidized mortgage loans (Mortgage Loans) secured primarily by multifamily properties and one healthcare property to units of State and Local Government in noncompetitive transactions. The subsidized mortgage loans contain Section 8 assistance, Below Market Interest Rates, or Section 236 Interest Rate Reduction Payments. The final listings of the Mortgage Loans will be available upon request. The Mortgage Loans will be sold without FHA insurance and with servicing released to a unit of State and Local Government which will service and maintain the mortgage loans as an important element of continuing the mission of providing affordable housing.

Two loan portfolio sales are in process:

(1) A portfolio of ten subsidized multifamily loans collateralized by 1,763 affordable units in New York City; and

(2) A portfolio of seven multifamily loans (six nonsubsidized loans, one subsidized loan), collateralized by 2,274 units, in Arizona, California, the District of Columbia, Illinois, and Tennessee.

Due Diligence Review

Upon HUD's receipt of an executed Confidentiality Agreement by the interested purchaser, they will be granted access to the available loan information for the loans to be offered in the sale. Access to loan information will be provided through electronic transfer of files.

Mortgage Loan Sale Policy

HUD reserves the right to add Mortgage Loans to or delete Mortgage Loans from any sale at any time prior to the Award Date. Mortgage Loans will not be withdrawn after the Award Date except as is specifically provided in the Loan Sale Agreement. The new mortgagor will be bound to the terms indicated by the Loan Sale Agreement. Regulatory Agreements and Escrow Accounts may continue and may be assigned to the mortgagee.

These are sales of Mortgage Loans to a unit of local government, pursuant to Section 203(k)(3) of the Housing and Community Development Amendments of 1978, Section 204 of the Departments of Veterans Affairs and Housing and

Urban Development, and Independent Agencies Appropriations Act, 1997, and Section 237 of the Omnibus Appropriations Act of 2009.

Mortgage Loan Sale Procedure

HUD will pursue noncompetitive sales as the method to sell the Mortgage Loans. This method of sale will ensure affordable housing by awarding the Mortgage Loans to units of State and Local Government. The final purchase price will be based on the Office of Management and Budget's approved market valuation methodology and, if applicable, adjusted by immediate repairs required to maintain the property. The itemized cost of immediate repairs shall adhere to HUD's Post-Closing Repair Requirements form HUD–9552.

Freedom of Information Act Requests

HUD will comply with the provisions of the Freedom of Information Act, 5 U.S.C. 552 and applicable regulations, in its disclosure of information regarding these sales, including, but not limited to, the successful bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sales of all the Mortgage Loans.

Scope of Notice

This notice applies to these sales only and does not establish HUD's policy for the sale of other mortgage loans.

Dated: August 17, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E9–20157 Filed 8–20–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORORO957000–L62510000–PM000: HAG09–0319]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 22 S., R. 4 W., approved July 6, 2009.
T. 23 S., R. 9 E., approved August 3, 2009.

The plats of survey of the following described lands were officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, on April 22, 2009.

Oregon

T. 1 S., R. 5 W., accepted April 9, 2009.
T. 2 S., R. 5 W., accepted April 9, 2009.
T. 22 S., R. 5 W., accepted April 9, 2009.
T. 22 S., R. 9 W., accepted April 16, 2009.
T. 35 S., R. 3 W., accepted April 16, 2009.

The plat of survey of the following described lands was officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, on June 18, 2009.

Oregon

T. 10 S., R. 1 E., accepted May 14, 2009.

The plat of survey of the following described lands was officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, on July 17, 2009.

Washington

T. 13 N., R. 3 W., accepted June 15, 2009.

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Oregon/Washington State Office, Bureau of Land Management, 333 S.W. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Sciences, Bureau of Land Management, 333 S.W. 1st Avenue, Portland, Oregon 97204.

Dated: August 11, 2009.

Fred O'Ferrall,

Branch of Lands and Minerals Resources.

[FR Doc. E9–20206 Filed 8–20–09; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Saint Martin's Waynick Museum, Lacey, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Saint Martin's Waynick Museum, Lacey, WA. The human remains were removed from a site near Vantage, Kittitas County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Saint Martin's Waynick Museum professional staff in consultation with representatives of the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes and Bands of the Yakama Nation, Washington; and Wanapum Band, a non-Federally recognized Indian group.

At an unknown date, human remains representing a minimum of one individual were removed from a site near Vantage, by the Interstate–90 Bridge, in Kittitas County, WA. Around 1995, Mr. Willis Clark donated the human remains to the Saint Martin's Waynick Museum, along with his collection of cut and polished rocks. No known individual was identified. No associated funerary objects are present.

The remains of this individual consist of a partly fragmented cranium, a mandible broken into three pieces, eight unattached teeth, and skull fragments. On August 18, 2006, Dr. Stephen Fulton, Associate Professor of Biology at Saint Martin's University, concluded that the human remains in question match notes on an index card that was in the same box as the remains. The note states, ''This skull and bones found in shallow grave some 20 years ago on the bank of the Columbia River, about 5 miles from old Vantage bridge. The area is under water at present.''

Ethnographic documentation indicates that the Vantage area was the aboriginal territory of the Moses-Columbia or Sinkiuse, Yakama, and Wanapum (Daugherty 1973, Miller 1998, Mooney 1896, Ray 1936, Spier 1936), whose descendants are represented today by the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes and Bands of the Yakama Nation, Washington; and Wanapum Band, a non-Federally recognized Indian group.

Officials of the Saint Martin's Waynick Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Saint Martin's Waynick Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is

a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes and Bands of the Yakama Nation, Washington; and Wanapum Band, a non-Federally recognized Indian group.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Brother Luke Devine, Saint Martin's Waynick Museum, 5300 Pacific Ave. SE., Lacey, WA 98503, telephone (360) 438–4458, before September 21, 2009. Repatriation of the human remains to the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes and Bands of the Yakama Nation, Washington; and Wanapum Band, a non-Federally recognized Indian group, as joint claimants, may proceed after that date if no additional claimants come forward.

Saint Martin's Waynick Museum is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes and Bands of the Yakama Nation, Washington; and Wanapum Band, a non-Federally recognized Indian group, that this notice has been published.

Dated: August 7, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–20104 Filed 8–20–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: The Public Museum, Grand Rapids, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of The Public Museum, Grand Rapids, MI. The human remains and associated funerary objects were removed from the Ada site, Kent County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains and associated funerary objects was made by The Public Museum's professional staff in consultation with the Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; and Little Traverse Bay Bands of Odawa Indians, Michigan.

On unknown dates, human remains representing a minimum of 27 individuals were removed from the south (west) bank of the Grand River at the Ada Michigan site (20KT35) in Kent County, MI, by Ruth Herrick and several other avocational archeologists. Starting in 1947, and continuing in 1949, 1974, 1983 and 1994, the human remains and associated funerary objects were obtained by The Public Museum by Herrick through purchase or donation. In 1974, the largest source of the collection came to the museum from Dr. Ruth Herrick by bequest. No known individuals were identified. The 6,404 associated funerary objects are 61 brooches and pins; 286 fragmented pipes; 44 silver crosses and fragments; 55 gun flints; 318 metal fragments; 41 copper kettle fragments; 10 strike-a-lights and fragments; 507 ceramic and glass shards; 122 projectile points; 25 metal knives and fragments; 2 buttons; 2,182 trade beads; 85 stone tools; 50 nails; 27 buttons; 2 necklaces; 14 earrings and fragments; 2 tacks; 17 sets of cloth and leather fragments; 16 bracelets and fragments; 10 bullets; 867 pottery shards; 4 copper hair pipes; 33 spoons and fragments; 8 axes; 222 animal bone fragments; 4 unmodified lithics; 11 fire cracked rocks; 5 copper kettles; 1 leather knife sheath; 1 mirror; 2 forks; 31 shells and fragments; 8 shell beads; 1 bell; 12 turtle shell fragments; 2 pendants; 6 thimbles; 3 rings; 3 wood fragments; 1,242 chert flakes; 1 horse shoe; 9 awls; 7 fossils; 4 fish hooks; 1 penny dated 1888; 6 antler fragments; 2 marbles; 5 metal spikes; 9 silver armbands; 1 silver gorget; 1 set of red ochre; 1 red ochre stained paint pot; 1 coin dated 1885; 1 coin dated 1883; 1 coin dated 1847; 1 coin dated 1820; 1 coin dated 1825; 1 coin dated 1832; 1 coin with date unknown; 3 bone gaming pieces; 1 bone comb; 1 George III peace medal; and 3 charcoal samples.

Artifacts from this site are from two discrete time periods. The first is a prehistoric occupation (15th century), and the second time period is an 18th–19th century Native American occupation. Based on the site's geographical location at the confluence of the Grand and Thornapple Rivers, archeological evidence indicates this site was intermittently occupied from prehistoric times into the historic era, including a trading post operated by Rix Robinson in the vicinity of this site (1821 to 1834). Based on field notes, collection records, and artifact typology, the majority of the human remains and associated artifacts date to the 18th and 19th century.

The human remains and associated funerary objects are, by a preponderance of the evidence, found to have an affiliation to the Little River Band of Ottawa Indians. Many Little River Ottawa Band members are descendants of Grand River Band members who migrated from the Grand River area to the Little Manistee River area in more recent historic times. The historic occupation of Kent County, MI, by the Little River Bands of Ottawa Indians is well documented.

Officials of The Public Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 27 individuals of Native American ancestry. Officials of The Public Museum also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 6,404 associated funerary objects described above are reasonably believed to have been placed with or near individual remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of The Public Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Little River Band of Ottawa Indians, Michigan.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Marilyn Merdzinski, Director of Collections and Preservation, The Public Museum, 272 Pearl St. NW., Grand Rapids, MI 49504, telephone (616) 456–3521, before September 21, 2009. Repatriation of the human remains and associated funerary objects to the Little River Band of Ottawa Indians, Michigan may proceed after that date if no additional claimants come forward.

The Public Museum is responsible for notifying the Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; and Little Traverse Bay Bands of Odawa Indians, Michigan that this notice has been published.

Dated: July 30, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–20100 Filed 8–20–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Saint Martin's Waynick Museum, Lacey, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Saint Martin's Waynick Museum, Lacey, WA. The human remains were removed from a site near the Grand Coulee Dam, Stevens County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Saint Martin's Waynick Museum professional staff in consultation with representatives of the Confederated Tribes of the Colville Reservation, Washington.

At an unknown date, human remains representing a minimum of one individual were removed from a site in or near Kettle Falls, located near the Grand Coulee Dam, Stevens County, WA. No known individual was identified. No associated funerary objects are present.

The remains of this individual, consisting of a cranium and mandible, are identified in an accompanying note as being from ''Kettle Falls, Stevens County, Washington, near the Grand Coulee Dam.'' Most of the objects in the Saint Martin's Waynick Museum collection not linked to a specific donor are assumed to have been part of the original, founding collection of Mr. Lynne Waynick, and were donated to the care of Saint Martin's Abbey during the 1960s. As no other donor is identified, the human remains of this individual are assumed to be part of Mr. Waynick's collection.

Archeological and historical documentation locates the Kettle Falls area (both before and after the construction of the Grand Coulee Dam) within the aboriginal territory of the Confederated Tribes of the Colville Reservation, Washington. Ethnographic sources associate the Kettle Falls area with the Colville and the Lakes Tribes or Bands (Kennedy and Bouchard 1998; Mooney 1896; Ray 1936; Spier 1936; Swanton 1953). Both the Colville and the Lakes became part of the 12 tribes and bands of the Confederated Tribes of the Colville Reservation, Washington. The Colville Reservation was created by Executive Order in 1872.

Officials of the Saint Martin's Waynick Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Saint Martin's Waynick Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes of the Colville Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Brother Luke Devine, Saint Martin's Waynick Museum, 5300 Pacific Ave. SE., Lacey, WA 98503, telephone (360) 438–4458, before September 21, 2009. Repatriation of the human remains to the Confederated Tribes of the Colville Reservation, Washington may proceed after that date if no additional claimants come forward.

Saint Martin's Waynick Museum is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington that this notice has been published.

Dated: August 7, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–20105 Filed 8–20–09; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. NAFTA–103–024]

Certain Textile Articles Containing Acrylic and Modacrylic Fibers: Effect of Modifications of NAFTA Rules of Origin for Goods of Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt of a request on July 30, 2009, from the Office of the United States Trade Representative (USTR) under authority delegated by the President and pursuant to section 103 of the North American Free Trade Agreement (NAFTA) Implementation Act (19 U.S.C. 3313), the Commission instituted investigation No. NAFTA–103–024, *Certain Textile Articles Containing Acrylic and Modacrylic Fibers: Effect of Modifications of NAFTA Rules of Origin for Goods of Canada.*

DATES:

October 2, 2009: Deadline for filing all written submissions.

On or before November 30, 2009: Transmittal of report to the USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov/edis3-internal/app.*

FOR FURTHER INFORMATION CONTACT: Project Leader Andrea Boron (202–205–3433 or *andrea.boron@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gerhard of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov).* The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's ADD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: Annex 300–B, Chapter 4, and Annex 401 of the NAFTA contain the rules of origin for textiles and apparel for application of the tariff provisions of the NAFTA. These rules are set forth for the United States in general note 12 to the Harmonized Tariff Schedule (HTS). According to the USTR's request letter, U.S. negotiators have recently reached agreement in

principle with representatives of the government of Canada on proposed modifications to the rules of origin of the NAFTA for certain textile articles containing acrylic and modacrylic staple fibers as described in part II of the attachment to the letter (for the text of the letter and the attachment, see the Commission's Web site for this investigation at *http://www.usitc.gov/secretary/fed_reg_notices/332/*). (The USTR's letter also requested Commission advice regarding proposed modifications to the rules of origin of the NAFTA for certain textile articles of rayon and other manmade fibers described in part I of the attachment. The Commission is preparing that advice on the same schedule under investigation No. NAFTA–103–023, *Certain Textile Articles Containing Rayon and Other Manmade Fibers: Effect of Modifications of NAFTA Rules of Origin for Goods of Canada and Mexico*.)

Section 202(q) of the North American Free Trade Agreement Implementation Act (the Act) authorizes the President, subject to the consultation and layover requirements of section 103 of the Act, to proclaim such modifications to the rules of origin as are necessary to implement an agreement with one or more of the NAFTA countries pursuant to paragraph 2 of section 7 of Annex 300–B of the Agreement. One of the requirements set out in section 103 of the Act is that the President obtain advice from the United States International Trade Commission. The request letter asks that the Commission provide advice on the probable effect of the proposed modifications on U.S. trade under the NAFTA, total U.S. trade, and on domestic producers of the affected articles. The USTR asked that the Commission submit its advice to USTR by November 30, 2009, and that the Commission shortly thereafter issue a public version of the report with any confidential business information deleted.

Additional information concerning the articles and the proposed modifications, including a copy of the USTR's request letter, can be obtained by accessing the Commission's Web site at *http://www.usitc.gov.* The current NAFTA rules of origin applicable to U.S. imports can be found in general note 12 of the HTS (see ''General Notes'' link at *http://www.usitc.gov/tata/hts/bychapter/index.htm*).

Written Submissions: No public hearing is planned. However, interested parties are invited to file written submissions and other information concerning the matters to be addressed in this investigation. All written submissions should be addressed to the Secretary. To be assured of consideration by the Commission, written submissions related to the Commission's report should be submitted at the earliest possible date, and should be received not later than 5:15 p.m., October 2, 2009. All written submissions must conform to the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize the filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook on Electronic Filing Procedures, *http://www.usitc.gov/docket_services/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000). Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the USTR and the President. As requested by the USTR, the Commission will publish a public version of the report. However, in the public version, the Commission will not publish confidential business information in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: August 17, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–20108 Filed 8–20–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1163 (Preliminary)]

Woven Electric Blankets From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of woven electric blankets, provided for in subheading 6301.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).[2]

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Daniel R. Pearson determines that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from China of woven electric blankets.

Background

On June 30, 2009, a petition was filed with the Commission and Commerce by Sunbeam Products, Inc. doing business as Jarden Consumer Solutions, Boca Raton, FL, alleging that an industry in the United States is materially injured by reason of LTFV imports of woven electric blankets from China. Accordingly, effective June 30, 2009, the Commission instituted antidumping duty investigation No. 731–TA–1163 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 7, 2009 (74 FR 32192). The conference was held in Washington, DC, on July 21, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 14, 2009. The views of the Commission are contained in USITC Publication 4097 (August 2009), entitled Woven Electric Blankets from China: Investigation No. 731–TA–1163 (Preliminary).

By order of the Commission.

Issued: August 17, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–20109 Filed 8–20–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. NAFTA–103–023]

Certain Textile Articles Containing Rayon and Other Manmade Fibers: Effect of Modifications of NAFTA Rules of Origin for Goods of Canada and Mexico

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt of a request on July 30, 2009, from the Office of the United States Trade Representative (USTR) under authority delegated by the President and pursuant to section 103 of the North American Free Trade Agreement (NAFTA) Implementation Act (19 U.S.C. 3313), the Commission instituted investigation No. NAFTA–103–023, *Certain Textile Articles Containing Rayon and Other Manmade Fibers: Effect of Modifications of NAFTA Rules of Origin for Goods of Canada and Mexico.*

DATES:

October 2, 2009: Deadline for filing all written submissions.

On or before November 30, 2009: Transmittal of report to the USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov/edis3-internal/app.*

FOR FURTHER INFORMATION CONTACT: Project Leader Andrea Boron (202–205–3433 or *andrea.boron@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: Annex 300–B, Chapter 4, and Annex 401 of the NAFTA contain the rules of origin for textiles and apparel for application of the tariff provisions of the NAFTA. These rules are set forth for the United States in general note 12 to the Harmonized Tariff Schedule (HTS). According to the USTR's request letter, U.S. negotiators have recently reached agreement in principle with representatives of the governments of Canada and Mexico on proposed modifications to the rules of origin of the NAFTA for certain textile articles containing rayon and other manmade fibers as described in part I of the attachment to the letter (for the text of the letter and attachment, see the Commission's Web site for this investigation at *http://www.usitc.gov/secretary/fed_reg_notices/332/*). (The USTR's letter also requested Commission advice regarding proposed modifications to the rules of origin of the NAFTA for certain textile articles containing acrylic and modacrylic staple fibers, described in part II of the attachment to the letter. The Commission is preparing that advice on the same schedule under investigation No. NAFTA–103–024, *Certain Textile Articles Containing Acrylic and Modacrylic Fibers: Effect of Modifications of NAFTA Rules of Origin for Goods of Canada.*)

Section 202(q) of the North American Free Trade Agreement Implementation Act (the Act) authorizes the President, subject to the consultation and layover requirements of section 103 of the Act, to proclaim such modifications to the rules of origin as are necessary to implement an agreement with one or more of the NAFTA countries pursuant to paragraph 2 of section 7 of Annex 300–B of the Agreement. One of the requirements set out in section 103 of the Act is that the President obtain advice from the United States International Trade Commission. The request letter asks that the Commission provide advice on the probable effect of the proposed modifications on U.S. trade under the NAFTA, total U.S. trade, and on domestic producers of the affected articles. The USTR asked that the Commission submit its advice to USTR by November 30, 2009, and that the Commission shortly thereafter issue a public version of the report with any confidential business information deleted.

Additional information concerning the articles and the proposed modifications, including a copy of the USTR's request letter, can be obtained by accessing the Commission's Web site at *http://www.usitc.gov.* The current NAFTA rules of origin applicable to U.S. imports can be found in general note 12 of the HTS (see ''General Notes'' link at *http://www.usitc.gov/tata/hts/bychapter/index.htm*).

Written Submissions: No public hearing is planned. However, interested parties are invited to file written submissions and other information concerning the matters to be addressed in this investigation. All written submissions should be addressed to the Secretary. To be assured of consideration by the Commission, written submissions related to the Commission's report should be submitted at the earliest possible date, and should be received not later than 5:15 p.m., October 2, 2009. All written submissions must conform to the provisions of section 201.8 of the Commission's *Rules of Practice and*

Procedure (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize the filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook on Electronic Filing Procedures, *http://www.usitc.gov/docket_services/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the USTR and the President. As requested by the USTR, the Commission will publish a public version of the report. However, in the public version, the Commission will not publish confidential business information in a manner that would reveal the operations of the firm supplying the information.

Issued: August 17, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–20107 Filed 8–20–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–565]

In the Matter of Certain Ink Cartridges and Components Thereof; Consolidated Enforcement Proceeding and Enforcement Proceeding II; Notice of Commission Determinations on Civil Penalties; Termination of Enforcement Proceedings

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to levy civil penalties in the above-captioned proceeding after finding violations of cease and desist orders and a consent order issued in the original investigation. The Commission has terminated the proceedings.

FOR FURTHER INFORMATION CONTACT: Michael Haldenstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3041. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov/.* Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation in this matter on March 23, 2006, based on a complaint filed by Epson Portland, Inc. of Oregon; Epson America, Inc. of California; and Seiko Epson Corporation of Japan (collectively, ''Epson''). 71 FR 14720 (March 23, 2006). The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930 (''section 337'') in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink cartridges and components thereof by reason of infringement of claim 7 of U.S. Patent No. 5,615,957; claims 18, 81, 93, 149, 164, and 165 of U.S. Patent No. 5,622,439; claims 83 and 84 of U.S. Patent No. 5,158,377; claims 19 and 20 of U.S. Patent No. 5,221,148; claims 29, 31, 34, and 38 of U.S. Patent No. 5,156,472; claim 1 of U.S. Patent No. 5,488,401; claims 1–3 and 9 of U.S. Patent No. 6,502,917; claims 1, 31, and 34 of U.S. Patent No. 6,550,902; claims 1, 10, and 14 of U.S. Patent No. 6,955,422; claim 1 of U.S. Patent No. 7,008,053; and claims 21, 45, 53, and 54 of U. S. Patent No. 7,011,397. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainants requested that the Commission issue a general exclusion order and cease and desist orders. The Commission named as respondents 24 companies located in China, Germany, Hong Kong, Korea, and the United States. Several respondents were terminated from the investigation on the basis of settlement agreements or consent orders or were found in default.

On October 19, 2007, after review of the ALJ's final ID, the Commission made its final determination in the investigation, finding a violation of section 337. The Commission issued a general exclusion order, a limited exclusion order, and cease and desist orders directed to several domestic respondents. The Commission also determined that the public interest factors enumerated in 19 U.S.C. 1337(d), (f), and (g) did not preclude issuance of the aforementioned remedial orders, and that the bond during the Presidential period of review would be $13.60 per cartridge for covered ink cartridges. Certain respondents appealed the Commission's final determination to the United States Court of Appeals for the Federal Circuit (''Federal Circuit''). On January 13, 2009, the Federal Circuit affirmed the Commission's final determination without opinion pursuant to Fed. Cir. R. 36. *Ninestar Technology Co. et al.* v. *International Trade Commission,* Appeal No. 2008–1201.

On February 8, 2008, Epson filed two complaints for enforcement of the Commission's orders pursuant to Commission rule 210.75. Epson proposed that the Commission name five respondents as enforcement respondents. On May 1, 2008, the Commission determined that the criteria for institution of enforcement proceedings were satisfied and instituted consolidated enforcement proceedings, naming the five following proposed respondents as enforcement respondents: Ninestar Technology Co., Ltd.; Ninestar Technology Company, Ltd.; Town Sky Inc. (collectively, the

''Ninestar Respondents''), as well as Mipo America Ltd. (''Mipo America'') and Mipo International, Ltd (collectively, the ''Mipo Respondents''). On March 18, 2008, Epson filed a third enforcement complaint against two proposed respondents: Ribbon Tree USA, Inc. (dba Cana-Pacific Ribbons) and Apex Distributing Inc.(collectively, the ''Apex Respondents''). On June 23, 2008, the Commission determined that the criteria for institution of enforcement proceedings were satisfied and instituted another formal enforcement proceeding and named the two proposed respondents as the enforcement respondents. On September 18, 2008, the ALJ issued Order No. 37, consolidating the two proceedings.

On April 17, 2009, the ALJ issued his Enforcement Initial Determination (EID) in which he determined that there have been violations of the Commission's cease and desist orders and consent order and recommended that the Commission impose civil penalties for such violations. The Ninestar Respondents filed a timely petition for review. The Commission considered the EID, the petition for review, the responses thereto, and other relevant portions of the record and determined not to review the EID on June 19, 2009.

The Commission then requested separate briefing concerning the imposition of civil penalties for violation of the cease and desist orders and a consent order. Epson, the Ninestar Respondents, and the Commission investigative attorney filed written submissions and responses thereto.

Based upon its consideration of the EID, the submissions of the parties, and the entire record in this proceeding, the Commission adopts the EID's analysis concerning civil penalties, except as otherwise noted or supplemented in its order and opinion (to be issued later). However, while the Commission adopts the EID's recommended penalty with respect to the Mipo Respondents and the Apex Respondents, the Commission has determined to impose a lesser penalty on the Ninestar Respondents.

Accordingly, and subject to final adjudication of any appeal of the same, the Commission has determined to impose a civil penalty in the amount of $11,110,000 against the Ninestar Respondents, jointly and severally. Against the Mipo Respondents, the Commission has determined to impose a civil penalty in the amount of $9,700,000 jointly and severally, and the Commission has determined to impose a civil penalty in the amount of $700,000 jointly and severally against the Apex Respondents.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.75 of the Commission's Rules of Practice and Procedure (19 CFR 210.75).

Issued: August 17, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–20106 Filed 8–20–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on August 17, 2009, a proposed Consent Decree in *United States* v. *City Of Portsmouth, New Hampshire,* Civil Action No. 1:09–cv–283, was lodged with the United States District Court for the District of New Hampshire.

In this action, the United States seeks, *inter alia,* injunctive relief in relation to discharges by the City of Lebanon, New Hampshire (City) from its combined sewer overflows (CSOs) and wastewater treatment facility, in violation of the City's National Pollutant Discharge Elimination System Permit issued under the Clean Water Act, 33 U.S.C. 1251, *et seq.* The Consent Decree requires the City, among other things, to control discharges from the CSO outfalls, propose a schedule for construction of a secondary wastewater treatment facility for approval by the United States Environmental Protection Agency, and upon inclusion of the schedule in the Consent Decree, comply with the construction schedule.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *City of Portsmouth, New Hampshire,* D.J. Ref. 90–5–1–1–09308.

The Consent Decree may be examined at the Office of the United States Attorney, District of New Hampshire, 53 Pleasant Street, Concord, NH, and at U.S. EPA Region 1, 1 Congress Street, Boston, MA. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $18.75 (25 cents per page reproduction costs of Consent Decree and Appendices) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–20067 Filed 8–20–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in United States v. Waste Management of Wisconsin, Inc., et al. Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on August 17, 2009, a proposed Consent Decree was lodged with the United States District Court for the Eastern District of Wisconsin in *United States* v. *Waste Management of Wisconsin, Inc., et al.,* Case No. 09–cv–0135. The Consent Decree between the United States, on behalf of the U.S. Environmental Protection Agency (''U.S. EPA''), and the settling defendants relates to certain liabilities under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.,* in connection with the Watertown Tire Fire Site in Watertown, Wisconsin (the ''Site''). Under the proposed Consent Decree, the settling defendants are required to pay $1,000 and pursue insurance proceeds in ongoing State court litigation to reimburse costs incurred by U.S. EPA in connection with the Site.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S.

Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Waste Management of Wisconsin, Inc., et al.,* DJ Ref. No. 90–11–3–09429.

The Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of Wisconsin, 517 E. Wisconsin Ave., Suite 530, Milwaukee, WI 53202–4580 by request to Assistant U.S. Attorney Matthew Richmond, and at the U.S. EPA Region V, 77 West Jackson Blvd., Chicago, IL 60604. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–20081 Filed 8–20–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Modification to Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on August 17, 2009, a proposed modification ''Modification'') to the Consent Decree in *United States* v. *City of Newburgh, et al.*, Civil Action No. 08 Civ. 7378 (SCR) (''Consent Decree'') was lodged with the United States District Court for the Southern District of New York.

The Modification adds 58 potentially responsible parties to a prior Consent Decree regarding the the Consolidated Iron and Metal Company Superfund Site (the ''Site''). The Site is a former junkyard and scrap metal processing facility located in the City of Newburgh, New York. Consolidated Iron and Metal Company, Inc. (''Consolidated'') operated the facility from the 1950s until 1999. These 58 parties arranged for scrap metal containing hazardous substances to be transported to the Site for treatment or disposal. Consolidated, in the course of processing scrap metal materials, contaminated the Site with hazardous substances, including lead, polychlorinated biphenyls and volatile organic compounds.

Under the Modification, $426,220 will be paid on behalf of these 58 parties to the United States. Under the Modification, the 58 parties will receive a covenant not to sue regarding the Site from the United States, on behalf of the Environmental Protection Agency (''EPA''), under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9607, and contribution protection regarding the Site under section 113 of the CERCLA, 42 U.S.C. 9613.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *City of Newburgh, et al.*, D.J. Ref. 90–11–3–07979/2.

The Modification may be examined at the Office of the United States Attorney, 86 Chambers Street, 3rd Floor, New York, New York 10007, and at U.S. EPA Region 2, Office of Regional Counsel, 290 Broadway, New York, New York 10007–1866. During the public comment period, the Modification may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Modification may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–20144 Filed 8–20–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0224]

Office of Juvenile Justice and Delinquency Prevention; Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: 30-day notice of information collection under review: National Youth Gang Survey.

The U.S. Department of Justice (DOJ), Office of Justice Programs (OJP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection request is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 74, Number 112, pages 28068–28069, on June 12, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 21, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Department of Justice Desk Officer, 725 17th Street, NW., Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–3888. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* National Youth Gang Survey.

3. *Agency form number, if any, and the applicable component of the department sponsoring the collection:* The Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice, is sponsoring the collection.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Local, state, or tribal law enforcement agencies.

Other: None.

Abstract: This collection will gather information related to youth and their activities for research and assessment purposes.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take 2,100 respondents approximately ten minutes each to complete the survey.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual burden hours to complete the certification form are fewer than 425 hours.

If additional information is required, contact Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, 601 D Street, NW., Washington, DC 20530.

Dated: August 18, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–20182 Filed 8–20–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0014]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Application for Registration (DEA Form 224); Application for Registration Renewal (DEA Form 224a); Affidavit for Chain Renewal DEA Retail Pharmacy Registration (DEA Form 224b); Application for Modification of Registration for Online Pharmacies (DEA–224c)

ACTION: 30-day notice of information collection under review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 113, page 28274, on June 15, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 21, 2009. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection 1117–0014:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:*

Application for Registration (DEA Form 224);

Application for Registration Renewal (DEA Form 224a);

Affidavit for Chain Renewal (DEA Form 224b);

Application for Modification of Registration for Online Pharmacies (DEA–224c).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number: DEA Forms 224, 224a, 224b, and 224c; Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Not-for-Profit Institutions; State, Local or Tribal Government.

Abstract: All firms and individuals who distribute or dispense controlled substances must register with the DEA under the Controlled Substances Act. Registration is needed for control measures over legal handlers of controlled substances and is used to monitor their activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 12,094 persons complete DEA Form 224 on paper, at 12 minutes per form, for an annual burden of 2,418.8 hours. It is estimated that 59,283 persons complete DEA Form 224 electronically, at 8 minutes per form, for an annual burden of 7,904.4 hours. It is estimated that 159,678 persons complete DEA Form 224a on paper, at 12 minutes per form, for an annual burden of 31,935.6 hours. It is estimated that 209,285 persons complete DEA Form 224a electronically, at 4 minutes per form, for an annual burden of 13,952.3 hours. It is estimated that 16 persons complete DEA Form 224b, at 5 hours per form, for an annual

burden of 80 hours. It is estimated that 250 persons complete DEA Form 224c electronically, at 15 minutes per form, for an annual burden of 62.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that this collection will create a burden of 56,354 annual burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 18, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–20183 Filed 8–20–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0050]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Reports of Dispensing of Controlled Substances by Online Pharmacies (DEA Form 332)

ACTION: 30-day notice of information collection under review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 113, page 28275, on June 15, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 21, 2009. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection 1117–0050

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Reports of Dispensing of Controlled Substances by Online Pharmacies (DEA Form 332).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number: DEA Form 332; Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Not-for-Profit Institutions; State, Local or Tribal Government.

Abstract: The Controlled Substances Act (21 U.S.C. 827(d)(2)) requires online pharmacies to report to DEA the total quantity of controlled substances that the pharmacy has dispensed during each calendar month by any means, regardless of whether the controlled substances are dispensed by means of the Internet. Reports are required to be filed by every pharmacy that, at any time during a calendar month, holds a modification of registration authorizing it to operate as an online pharmacy, regardless of whether the online pharmacy dispenses any controlled substances by means of the Internet during the month. Such reporting is mandated by the Ryan Haight Act and permits DEA to monitor the dispensing of controlled substances by online pharmacies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 250 persons complete DEA Form 332 electronically, at 15 minutes per form, for an annual burden of 750 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that this collection will create a burden of 750 annual burden hours.

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 18, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–20184 Filed 8–21–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Mechanical Engineers

Notice is hereby given that, on July 20, 2009, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American Society of Mechanical Engineers (''ASME'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, since May 7, 2009, ASME has partitioned its existing standards writing committee on Boilers and Pressure Vessels into ten separate standards writing committees, each with its own individual charter; published two new standards; and initiated three new standards activities within the general nature and scope of ASME's standards development activities, as

specified in its original notification. More detail regarding these changes can be found at *http://www.asme.org.*

On September 15, 2004, ASME filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 13, 2004 (69 FR 60895).

The last notification was filed with the Department on April 17, 2009. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 7, 2009 (74 FR 21402).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–19881 Filed 8–20–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open SystemC Initiative

Notice is hereby given that, on July 1, 2009, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open SystemC Initiative (''OSCI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Philippe Coussy, Lorient, FRANCE; and OFFIS e.V., Oldenburg, Germany have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSCI intends to file additional written notifications disclosing all changes in membership.

On October 9, 2001, OSCI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 3, 2002 (67 FR 350).

The last notification was filed with the Department on November 21, 2008. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 31, 2008 (73 FR 80431).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–19883 Filed 8–20–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on June 30, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASN/JES & Co., Tucson, AZ; Cambridge Assessment, Cambridge, United Kingdom; Hughes Network Systems, Germantown, MD; Iowa Community College Online Consortium (ICCOC), W. Burlington, IA; New Publishing Solutions, Sparta, NJ; Ubion Co., Ltd., Seoul, Republic of Korea; and University of Glasgow, Glasgow, United Kingdom have been added as parties to this venture. Also, Editure, Education Technology Division, North Melbourne, Victoria, Australia has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on April 16, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 21, 2009 (74 FR 23884).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–19885 Filed 8–20–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Information Card Foundation

Notice is hereby given that, on July 6, 2009, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Information Card Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ACSEL, Paris, France; and Kynetx, Lehi, UT have been added as parties to this venture. Also, Figlo, Capell a/d Yessel, The Netherlands has withdrawn as a party to this venture. In addition, Parity Communications, Inc. has changed its name to Azigo, Inc., Needham, MA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Information Card Foundation intends to file additional written notifications disclosing all changes in membership.

On June 2, 2008, Information Card Foundation filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 16, 2008 (73 FR 40883).

The last notification was filed with the Department on April 17, 2009. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 22, 2009 (74 FR 24037).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–19884 Filed 8–20–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Announcement of Public Briefings on Using the New H–2B Temporary Labor Certification Process for Occupations Other Than Agriculture or Registered Nursing

AGENCIES: Employment and Training Administration; Department of Labor.

ACTION: Notice of meeting.

SUMMARY: The Office of Foreign Labor Certification (OFLC) in the Department of Labor's Employment & Training Administration (ETA) has recently re-engineered several of its programs, including the H–2B temporary nonagricultural program. In addition, the Department's Wage and Hour Division (WHD) of the Employment Standards Administration (ESA) has amended contractual obligations applicable to employers of workers subject to Sections 101, 103 and 214(c) of the Immigration and Nationality Act (INA).

On December 19, 2008, the Department published a final rule redesigning the H–2B temporary nonagricultural program. The final rule significantly streamlined the labor certification process, including eliminating the duplicative review of H–2B applications by State Workforce Agencies and federalizing the provision of prevailing wage determinations. The H–2B Final Rule contains two implementation stages; a transition stage for all applications with a date of need before October 1, 2009, and a full implementation stage for applications with a date of need on or after October 1, 2009. All employers with a date of need on or after October 1, 2009 are required to comply with all assurances and obligations under the new final regulations.

In the preamble discussion of the H–2B Final Rule, the Department announced that it would provide stakeholder briefings on the H–2B Final Rule. ETA is issuing this notice to announce that it has scheduled two public briefings to educate stakeholders, program users, and other interested members of the public on applying for H–2B temporary labor certifications under the full implementation stage of the re-engineered program and on using the new ETA–9142 form.

As currently planned, the two briefings will take place in September of 2009 in Boston and Chicago. This notice provides the public with locations, dates, and registration information regarding the briefings. However, these briefings are subject to change and/or cancellation without further notice in the **Federal Register**. In the event of a change participants who have registered will be notified.

Time and Dates:

1. Thursday, September 17, 2009, Boston, Massachusetts. Time: 8:30 a.m. to 12:30 p.m.

2. Tuesday, September 22, 2009, Chicago, Illinois. Time: 12:30 p.m. to 4:30 p.m.

ADDRESSES: The meeting locations are:

1. Boston—Sheraton Boston Hotel, 39 Dalton Street; Boston, MA 02199.

2. Chicago—Westin O'Hare, 6100 North River Road, Rosemont, Illinois 60018.

To Register: To register to attend a briefing session please complete the registration process on-line, by visiting *http://www.devdti.haverstick.biz/OFLCbriefings/Home.cfm.* For questions regarding the registration process, please call (703) 299–1623 (this is not a toll-free number). Due to space considerations, attendance will be limited to those who register online. In the event of cancellation or change, registered participants will be notified.

FOR FURTHER INFORMATION CONTACT: For further information regarding the briefing, please contact William L. Carlson, PhD, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; *Telephone:* (202) 693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The registration information should be used by any member of the public planning to attend a briefing session.

Signed in Washington, DC, this 17th day of August 2009.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. E9–20112 Filed 8–20–09; 8:45 am]

BILLING CODE 4510–FP–P

LEGAL SERVICES CORPORATION

Request for Comments—LSC Budget Request for FY 2011

AGENCY: Legal Services Corporation.

ACTION: Request for Comments—LSC Budget Request for FY 2011.

SUMMARY: The Legal Services Corporation is beginning the process of developing its FY 2011 budget request to Congress and is soliciting suggestions as to what the request should be.

DATES: Written comments must be received on or before September 4, 2009.

ADDRESSES: Written comments may be submitted by mail, fax or e-mail to Charles Jeffress, Chief Administrative Officer, Legal Services Corporation, 3333 K St., NW., Washington, DC 20007; 202–295–1630 (phone); 202–337–6386 (fax); *cjeffress@lsc.gov*.

FOR FURTHER INFORMATION CONTACT: Charles Jeffress, Chief Administrative Officer, Legal Services Corporation, 3333 K St., NW., Washington, DC 20007; 202–295–1630 (phone); 202–337–6386 (fax); *cjeffress@lsc.gov*.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation's (LSC) mission is to promote equal access to justice in our Nation and to provide for high-quality civil legal assistance to low income persons. LSC submits an annual budget request directly to Congress and receives an annual direct appropriation to carry out its mission. For the current fiscal year (FY 2009), LSC received an appropriation of $390,000,000 of which $365,800,000 was for basic field programs and required independent audits; $4,200,000 was for the Office of Inspector General; $16,000,000 was for management and grants oversight; $3,000,00 was for technology initiative grants; and $1,000,000 was for loan repayment assistance. Consolidated Appropriations Act, 2009, Public Law 111–8, Div. B, Title IV, 123 Stat. 524 (2009). (The FY 2010 budget request has already been submitted to Congress and LSC is awaiting Congressional action.)

As part of its annual budget and appropriation process, LSC notifies the Office of Management and Budget (OMB) in September as to what the LSC budget request to Congress will be for the next fiscal year. Accordingly, LSC is currently in the process of formulating its FY 2011 budget request. The Finance Committee of the LSC Board of Directors will meet on September 21, 2009 to develop a recommendation to make to the full Board.

LSC invites public comment on what its FY 2011 budget request should be. Interested parties may submit comments to LSC by September 4, 2009. More information about LSC can be found at LSC's Web site: *http://www.lsc.gov*.

Dated: August 18, 2009.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. E9–20136 Filed 8–20–09; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site Visit review of the Materials Research Science and Engineering Center (MRSEC) at Carnegie Mellon University (CMU), by NSF Division of Materials Research (DMR) #1203.

Dates and Times: September 28, 2009; 7:45 a.m.–9 p.m. September 29, 2009; 8 a.m.–3:30 p.m.

Place: Carnegie Mellon University, Pittsburgh, PA.

Type of Meeting: Part-open.

Contact Person: Dr. William Brittain, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–5039.

Purpose of Meeting: To provide advice and recommendations concerning further support of the MRSEC at Carnegie Mellon University.

Agenda

Monday, September 28, 2009

7:45 a.m.–4:45 p.m. Open—Review of the CMU MRSEC.
4:45 p.m.–6 p.m. Closed—Executive Session.
6 p.m.–7 p.m. Open—Poster Session.
7 p.m.–9 p.m. Open—Dinner.

Tuesday, September 29, 2009

8 a.m.–9 a.m. Closed—Executive session.
9 a.m.–9:45 a.m. Open—Review of the Carnegie Mellon MRSEC.
9:45 a.m.–3:30 p.m. Closed—Executive Session, Draft and Review Report.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 18, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–20098 Filed 8–20–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–9073; NRC–2009–0364]

Uranium One Incorporated; Moore Ranch In-Situ Recovery Project; New Source Material License Application; Notice of Intent To Prepare a Supplemental Environmental Impact Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Intent (NOI).

SUMMARY: Uranium One Incorporated (Uranium One) submitted an application for a new source material license for the Moore Ranch *In-Situ* Recovery (ISR) Project to be located in Campbell County, Wyoming, approximately 50 miles south-southwest of Gillette, Wyoming and approximately 45 miles north-northeast of Casper, Wyoming. The application proposes the construction, operation, and decommissioning of ISR, also known as *in-situ* recovery, facilities and restoration of the aquifer from which the uranium is being extracted. Uranium One submitted the application for the new source material license to the U.S. Nuclear Regulatory Commission (NRC) by a letter dated October 2, 2007. A notice of receipt and availability of the license application, including the Environmental Report (ER) and opportunity to request a hearing was published in the **Federal Register** on January 25, 2008 (73 FR 4642).

The purpose of this notice of intent is to inform the public that the NRC, as part of its process to determine whether Uranium One's license request should be granted, will be preparing a site-specific Supplemental Environmental Impact Statement (SEIS). The SEIS will tier off of the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (ISR GEIS). In addition, as outlined in 36 CFR 800.8, ''Coordination with the National Environmental Policy Act'' (NEPA) the NRC plans to use its environmental review process to coordinate compliance with Section 106 of the National Historic Preservation Act.

FOR FURTHER INFORMATION CONTACT: For general information on the NRC NEPA or the environmental review process related to the Moore Ranch ISR Project application, please contact the NRC Environmental Project Manager, Behram Shroff, at (301) 415–0666 or *Behram.Shroff@nrc.gov.*

Information and documents associated with the Moore Ranch ISR Project, including the license application, are available for public review through our electronic reading room: *http://www.nrc.gov/reading-rm/adams.html* and on the NRC's Moore Ranch Site Web page: *http://www.nrc.gov/info-finder/materials/uranium/apps-in-review/moore-ranch-new-app-review.html.* Documents may also be obtained from NRC's Public Document Room at the U.S. Nuclear Regulatory Commission Headquarters, 11555 Rockville Pike (first floor), Rockville, Maryland.

SUPPLEMENTARY INFORMATION:

1.0 Background

Uranium One submitted the application for the new source material license to the NRC for ISR facilities by a letter dated October 2, 2007. A notice of receipt and availability of the license application, including the ER, and opportunity to request a hearing was published in the **Federal Register** on January 25, 2008 (73 FR 4642). No requests for hearing were submitted.

Relying on the ISR GEIS, the NRC originally planned to document its site-specific environmental evaluations by publishing draft Environmental Assessments (EAs) for comment. However, during the development of the final ISR GEIS, NRC decided to prepare an SEIS that will tier off of the ISR GEIS for applications to license new ISR facilities. Accordingly, draft and final SEISs will now be prepared for the Moore Ranch ISR Project. NRC staff met with Federal (Bureau of Land Management—Cheyenne, Casper, Buffalo; Bureau of Indian Affairs—Fort Washakie; Fish & Wildlife Service—Buffalo), State (Wyoming Department of Environmental Quality—Cheyenne, Sheridan; State Engineer's Office; Governor's Planning Office; State Historic Preservation Office) and local government agencies (City of Casper Planning Office; City of Gillette Planning Department, Town of Wright, and City of Douglas) and public organizations (Campbell County Economic Development Corporation; Wyoming Community Development Authority; Converse Area New Development Organization) in January 2009 as part of a site visit to gather site-specific information to assist in the preparation of the Moore Ranch ISR Project environmental review. NRC also contacted potentially interested tribes and local public interest groups via e-mail and telephone to gather additional information.

The NRC has begun evaluating the potential environmental impacts associated with the proposed ISR facility in parallel with the safety review of the license application. The NRC is

required by 10 CFR 51.20(b)(8) to prepare an Environmental Impact Statement (EIS) or a supplement to an EIS for the issuance of a license to possess and use source material for uranium milling. The ISR GEIS and the site-specific SEIS fulfills this regulatory requirement.

2.0 Moore Ranch ISR Facilities

The facilities, if licensed, would include a central processing plant, accompanying wellfields, and ion exchange columns. The milling process involves the dissolution of the water-soluble uranium from the mineralized host sandstone rock by pumping oxidants (oxygen or hydrogen peroxide) and chemical compounds (sodium bicarbonate) through a series of production and extraction wells. The uranium-rich solution is transferred from the production wells to the central processing plant for uranium concentration using ion exchange columns. Final processing is conducted in the central processing plant to produce yellowcake for use in manufacturing commercial nuclear fuel for use in power reactors.

3.0 Alternatives To Be Evaluated

Alternative 1: The license review process analyzes the Construction, Operation, Aquifer Restoration, and Decommissioning with Disposal via Deep Well Injection (Proposed Action). The proposed federal action is to issue a 10 CFR Part 40 license authorizing the possession and use of source material at the proposed ISR facilities. The NRC staff will analyze the construction, operation, and decommissioning of the proposed ISR facilities, and the restoration of the aquifer from which the uranium would be extracted. The ISR facilities would be located in Campbell County, Wyoming, approximately 50 miles south-southwest of Gillette, Wyoming and approximately 45 miles north-northeast of Casper, Wyoming.

Alternative 2: No Action. The no-action alternative would be not to issue the license. Under this alternative, the NRC would not approve the license application for the proposed ISR facilities. This serves as a baseline for comparison.

Other alternatives not listed here may be identified through the environmental review process.

4.0 Environmental Impact Areas To Be Analyzed

The following areas have been tentatively identified for analysis in the SEIS:

Land Use: Plans, policies, and controls;

Transportation: Transportation modes, routes, quantities, and risk estimates;

Geology and Soils: Physical geography, topography, geology, and soil characteristics;

Water Resources: Surface and groundwater hydrology, water use and quality, and the potential for degradation;

Ecology: Wetlands, aquatic, terrestrial, economically and recreationally important species, and threatened and endangered species;

Air Quality: Meteorological conditions, ambient background, pollutant sources, and the potential for degradation;

Noise: Ambient, sources, and sensitive receptors;

Historical and Cultural Resources: Historical, archaeological, and traditional cultural resources;

Visual and Scenic Resources: Landscape characteristics, manmade features and viewshed;

Socioeconomics: Demography, economic base, labor pool, housing, transportation, utilities, public services/facilities, and education;

Environmental Justice: Potential disproportionately high and adverse impacts to minority and low-income populations;

Public and Occupational Health: Potential public and occupational consequences from construction, routine operation, transportation, and credible accident scenarios (including natural events);

Waste Management: Types of wastes expected to be generated, handled, and stored; and

Cumulative Effects: Impacts from past, present, and reasonably foreseeable actions at and near the site(s).

This list is not intended to be all inclusive, nor is it a predetermination of potential environmental impacts.

5.0 The NEPA Process

The SEIS for the Moore Ranch ISR Project will be prepared pursuant to the NRC's NEPA Regulations at 10 CFR Part 51. The NRC and its contractor will prepare and publish a draft SEIS for comment. NRC currently plans to have a 45-day public comment period for the draft SEIS. Availability of the draft SEIS and the dates of the public comment period will be announced in the **Federal Register** and the NRC Web site: *http://www.nrc.gov.* The final SEIS will include responses to public comments received on the draft SEIS.

Dated at Rockville, Maryland, this 12th day of August 2009.

For the Nuclear Regulatory Commission.

Patrice M. Bubar,

Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E9–20117 Filed 8–20–09; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0219]

Request for Comments on a Reinstatement With Change of an Existing Information Collection

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the U.S. Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of an existing information collection. This information collection occurs electronically via the *USAJOBS Resume Builder* (online application) or completion and submission via regular mail, e-mail, fax, or in person of *OF 612 Optional Form Application for Federal Employment* or a resume. The *USAJOBS Resume Builder* and the *OF 612* both reflect the minimal critical elements collected across the Federal government to assess an applicant's qualifications for Federal jobs under the authority of sections 1104, 1302, 3301, 3304, 3320, 3361 3393, and 3394 of Title 5 United States Code.

This notice also announces that the Office of Personnel Management (OPM) intends to continue using the *Optional Form Application for Federal Employment (OF 612)* and will not be requesting cancellation from the Office of Management and Budget at this time.

The information collection was previously published in the **Federal Register** on February 25, 2009, at 73 FR 8589 allowing for a 60-day public comment period. We have received two comments on the 60-day Notice requesting that the OF–612 be continued.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are particularly invited on: Whether this information is necessary for the proper performance of functions of OPM, and whether it will have practical utility; whether our

estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

We estimate 50,125,000 applications will be completed annually using the *OF 612* and the *USAJOBS Resume Builder.* Each takes approximately 40 minutes to read and complete, depending on the amount of information the applicant wishes to include. The annual estimated burden is 33,416,667 hours.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 10236, Washington, DC 20503.

Please provide your mailing address or Fax number with your request.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. E9–20093 Filed 8–20–09; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Amendment of a System of Records

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice of amendment to system of records.

SUMMARY: OPM has amended an existing system of records subject to the Privacy Act of 1974 (5 U.S.C. 552a). This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of system of records maintained by the agency (5 U.S.C. 552a(e)(4)).

DATES: The changes became effective in November 2003. The system has been operational for 6 years without incident. Comments will be accepted until September 30, 2009.

ADDRESSES: Written comments must be sent to the U.S. Office of Personnel Management, Presidential Management Fellows Program, *Attn:* Rob Timmins (OPM\Central–11), 1900 E Street, NW., Room 1425, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Rob Timmins, (202) 606–2674, fax (202) 606–3040, or e-mail to *Rob.Timmins@opm.gov.* Please include your complete mailing address with your request.

SUPPLEMENTARY INFORMATION: This notice serves to update and amend collection, analysis, and maintenance of OPM\Central–11 (Presidential Management Fellows Program) as a result of new program regulations and an increased use of automated information technology. Revisions include the following: (1) Authority of Program now results from Executive Order 13318, Presidential Management Fellows Program, signed by President George W. Bush on November 21, 2003; (2) The Executive order changed the name from Presidential Management Intern (PMI) Program to the Presidential Management Fellows (PMF) Program; (3) There is no longer a category of records collection for semi-finalists; (4) As a result of the OPM re-organization in March 2003, the system location has been updated to reflect current name; and (5) The system manager contact has been updated to reflect the new PMF Program organization and location.

John Berry,

Director, U.S. Office of Personnel Management.

OPM\CENTRAL–11

SYSTEM NAME:

Presidential Management Fellows (PMF) Program Records.

SYSTEM LOCATION:

U.S. Office of Personnel Management, Human Resources Products and Services Division, Center for Leadership Capacity Services, Succession Planning Programs, Presidential Management Fellows Program, 1900 E Street, NW., Room 1425, Washington, DC 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on current and former PMFs and students pursuing graduate degrees who have been nominated by their graduate schools for consideration for the PMF Program, as well as contact information for Program stakeholders (*e.g.,* Agency PMF Coordinators, graduate school Nomination Officials, supervisors of PMFs).

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information about the covered individuals relating to name, Social Security Number, academic background, home address, telephone numbers, e-mail addresses, employment history, Indian and veterans' preference, and other personal information needed during the application, nomination, assessment, and selection processes, and as needed for training and development opportunities impacting PMFs and participating agencies. This system also will contain confidential evaluation information and assessment scores not available to the public.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 13318, signed by President George W. Bush on November 21, 2003.

PURPOSE(S):

These records are used by program personnel for the following reasons:

a. To determine basic program eligibility and to evaluate the nominees in a structured assessment process conducted by OPM.

b. To group the applicants into various categories (*e.g.,* applicants, nominees, finalists, and non-selectees) and make a final determination as to those candidates who will be referred (as finalists to become Fellows) to participating agencies for employment consideration.

c. For program evaluation functions to determine the effectiveness of the program and to improve program operations.

d. To facilitate interaction and communication between PMF Program participants and alumni.

e. To track PMF appointments, certifications, conversions, reappointments, withdrawals, resignations, extensions, waivers and deferrals.

f. To track agency reimbursements for PMF appointments.

g. To schedule and track PMF participation in Program-sponsored training and development events (*e.g.,* orientation, forums, graduation).

h. To track contact information of applicants, nominees, finalists, Fellows, Agency PMF Coordinators, PMF supervisors, graduate school Nomination Officials and other relevant stakeholders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

1. To refer pertinent information to the appropriate Federal, State or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order when there is an indication of a violation or potential violation of civil or criminal law or regulation.

2. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

3. To disclose information to another Federal agency, a Court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding. In those cases where the Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

4. To disclose information to the U.S. Department of Justice, or in a proceeding before a court, adjudicative body or other administrative body before which OPM is authorized to appear, when:

a. OPM, or any component thereof; or

b. Any employee of OPM in his or her official capacity; or

c. Any employee of OPM in his or her individual capacity where the Department of Justice or OPM has agreed to represent the employee; or

d. The United States, when OPM determines that litigation is likely to affect OPM or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OPM is deemed by OPM to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which records were collected.

5. To disclose information to officials of the Merit Systems Protection Board or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, *e.g.,* as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

6. To disclose information to the Equal Employment Opportunity Commission, when requested, in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

7. To disclose information to the Federal Labor Relations Authority or its General Counsel, when requested, in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

8. To refer candidates to Federal agencies for employment consideration.

9. To refer candidates to State and local governments, congressional offices, international organizations, and other public offices, with permission of the candidates, for the purpose of employment consideration and developmental opportunities.

10. To refer Fellows for consideration for reassignment and promotion within the employing agencies.

11. As a data source for management information of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel research functions or manpower studies, or to locate individuals for personnel research.

12. To request information from a Federal, State, or local agency maintaining civil, criminal or other information relevant to an agency decision concerning the hiring or retention of a candidate.

13. To provide an academic institution with information on a recent graduate's participation in the PMF Program, covering application, nomination, assessment, selection and appointment to a Federal position at a certain grade level, and graduation (completion of the PMF Program).

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored on forms, lists, magnetic tape, database systems, Web site, and media storage devices (*e.g.,* floppy disks, flash drives, CD–ROMs, *etc.*).

RETRIEVABILITY:

These records are indexed by name of applicants, maiden name (if applicable), graduate schools, State of residence, Social Security Number, graduate/undergraduate degree, Indian and/or veterans' preference, status in PMF Program (*e.g.,* applicant, nominee, finalist, non-finalist, Fellow), citizenship, foreign language(s), geographic employment preference(s), and any combination of these.

SAFEGUARDS:

These records are maintained in lockable metal file cabinets or a secured office suite and in computerized systems accessible to only those program staff whose official duties necessitate such access. Confidential passwords are required for access to these automated records. Computerized systems adhere to current IT and security policies and requirements.

RETENTION AND DISPOSAL:

Application files are maintained for a maximum of three (3) years; the automated data base of participant information will be destroyed when no longer needed for administrative purposes. Tapes are erased and manual records are either archived or destroyed. The PMF Program maintains a database system tracking all applicant history and program status from 1997 to the present. All hardcopies, as a result of the above described processes, are maintained in lockable filing cabinets and are archived in accordance with OPM's Records Management Handbook and records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Presidential Management Fellows Program Office, U.S. Office of Personnel Management, 1900 E Street, NW., Room 1425, Washington, DC 20415, Office (202) 606–1040, Fax (202) 606–3040, E-mail pmf@opm.gov, and Branch Chief/Technical Manager, Technical Services Group, U.S. Office of Personnel Management, 4685 Log Cabin Drive, Macon, GA 31204, Office (478) 744–2373, Fax (478) 744–2179.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the system managers. You must furnish the following information for your records to be located and identified:

a. Full Name at Time of Application.

b. Maiden Name (if applicable).

c. Home Address referenced at Time of Application.

d. Nominating Graduate School.

e. Graduate Degree referenced at Time of Application.

f. Year Applied to Program.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to and amendment of records. The section of the notice, titled Systems Exempted from Certain Provisions of the Act, indicates the kinds of materials exempted and the reasons for exempting them from access.

Current or former Presidential Management Fellows or nominees who wish to gain access to their non-exempt records should direct such a request in writing to the system managers. You must furnish the following information for your records to be located and identified.

a. Full Name at Time of Application.

b. Maiden Name (if applicable).
c. Home Address referenced at Time of Application.
d. Nominating Graduate School.
e. Graduate Degree referenced at Time of Application.
f. Year Applied to Program.

Individuals must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297).

CONTESTING RECORD PROCEDURE:

Specific material in this system has been exempted from Privacy act provisions at 5 U.S.C. 552a(d), regarding access to and amendment of records. The section of the notice titled Systems Exempted from Certain Provisions of the Act, indicates the kinds of materials exempted and the reasons for exempting them from amendment.

Current or former Presidential Management Fellows or nominees wishing to request amendment of their non-exempt records should contact the system managers. You must furnish the following information for your records to be located and identified:

a. Full Name at Time of Application.
b. Maiden Name (if applicable).
c. Home Address referenced at Time of Application.
d. Nominating Graduate School.
e. Graduate Degree referenced at Time of Application.
f. Year Applied to Program.

Individuals must also comply with OPM's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individual to whom it applies;
b. Nominating graduate school Deans, Chairpersons, and/or Academic Program Directors;
c. Federal, State, and local officials involved in the screening and selection process;
d. Employing agencies.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains testing and examination materials that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act when disclosure of the material would compromise the objectivity or fairness of the testing or examination process. OPM has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records, for any such testing or examination materials in the system.

[FR Doc. E9–20091 Filed 8–20–09; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974: New System of Records

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice of a new system of records.

SUMMARY: OPM proposes to add a new system of records to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency (5 U.S.C. 552a(e)(4)). The system has been operational since March 24, 2003 without incident. Publication of this system of records was inadvertently delayed. In the meantime, appropriate measures were taken to maintain the integrity and confidentiality of the information.

DATES: This action will be effective without further notice on September 30, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Send written comments to the Office of Personnel Management, ATTN: Kathryn Roberson, Manager, Federal Cyber Service: Scholarship for Service Program, 8610 Broadway, Rm. 305, San Antonio, TX 78217.

FOR FURTHER INFORMATION CONTACT: Kathryn Roberson, 202–369–1011.

SUPPLEMENTARY INFORMATION: The Federal Cyber Service: Scholarship for Service Web site (SFS) allows OPM the ability to fulfill its responsibility for the SFS program which was established by the National Science Foundation in accordance with the Federal Cyber Service Training and Education Initiative, as described in the President's *National Plan for Information Systems Protection*, to facilitate the timely registration, selection and placement of program-enrolled students in Federal agencies. Specified OPM personnel use SFS to update student information. The system also affords registered agency officials read-only access to student resumes to consider them for placement with their agency. Furthermore, it allows registered university officials limited read-only access to students in their program so they can ensure students are meeting program requirements.

U.S. Office of Personnel Management.

John Berry,

Director.

OPM INTERNAL–18

SYSTEM NAME:

Federal Cyber Service: Scholarship For Service (SFS)

SYSTEM LOCATION:

The IT infrastructure of SFS is housed at the Center for Talent Service Technical Services Group at 4685 Log Cabin Drive, Macon, GA 31204.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on certain citizens who were selected for participation in the SFS program. The system currently contains information on approximately 1000 participating students, 39 participating university officials, and 400 agency officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the database may contain the following on a participating student:

a. Name.
b. Address.
c. Phone number.
d. E-mail address.
e. Employment Information.
f. Education.

The records in the database may contain the following on participating university officials:

a. Name.
b. University address.
c. University phone number.
d. University e-mail address.
e. Fax number.

The records in the database may contain the following on registered agency officials:

a. Name.
b. Agency address.
c. Agency phone number.
d. Agency e-mail address.
e. Fax number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Cyber Service Training and Education Initiative as described in the President's *National Plan for Information Systems Protection*, gives OPM the authority to maintain the system.

PURPOSE:

The information is used by OPM's Center for Talent Services to register

scholarship recipient's education and experience and to provide this information to potential Federal employers. Students are selected by participating universities/colleges to receive the scholarship. Once selected and approved by OPM, the student is provided instructions on how to register their resume on-line. Approved Federal agencies and approved university officials are then able to retrieve resumes of the scholarship recipients through a password protected website.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used by:

1. OPM—

(A) To maintain the database.

(B) To produce to another Federal agency or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding, and such information is deemed by OPM to be arguably relevant and necessary to the litigation.

(C) To disclose information to the National Archives and Records Administration for use in records management inspections.

(D) To produce summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

(E) To disclose information to the Department of Justice (DOJ), or in a proceeding before a court, adjudicative body or other administrative body before which OPM is authorized to appear, when: OPM, or any component thereof; or any employee of OPM in his or her official capacity; or any employee of OPM in his or her individual capacity where DOJ or OPM has agreed to represent the employee; or the United States, when OPM determines that litigation is likely to affect OPM or any of its components; is a party to litigation or has an interest in such litigation, and the use of such records by DOJ or OPM is deemed by OPM to be arguably relevant and necessary to the litigation provided; however, that the disclosure is compatible with the purpose for which records were collected.

(F) To disclose information to officials of the Merit Systems Protection Board or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

(G) To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures or other functions vested in the Commission and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

(H) To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

(I) To disclose relevant and necessary information to designated officers and employees of agencies, offices and other establishments in all branches of the Federal Government for:

(a) conducting suitability or security investigations,

(b) classifying jobs,

(c) hiring or retaining employees,

(d) evaluating qualifications, suitability and loyalty to the United States Government,

(e) granting access to classified information or restricted areas,

(f) letting a contract, issuing a license, grant, or other benefit, or

(g) providing a service performed under a contract or other agreement.

(J) To disclose information to the appropriate Federal, State, local, tribal, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order when OPM–CFIS becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

(K) To disclose information to a congressional office in response to an inquiry made on behalf of an individual. Information will only be released to a congressional office if OPM receives a notarized authorization or signed statement under 28 U.S.C. 1746 from the subject of the investigation.

3. Approved University Officials—To view resumes of their participating students to ensure the accuracy of the students resume.

4. Approved Federal agencies—To obtain names and resumes of participating students available for employment.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

SFS maintains these records in an electronic database.

RETRIEVABILITY:

Records in SFS may be retrieved by the name of the individual about whom they are maintained.

SAFEGUARDS:

OPM has adopted appropriate administrative, technical, and physical controls in accordance with its Automated Information Systems Security Program to protect information in the SFS database. OPM restricts access to all of these records to employees who have the appropriate clearance and need-to-know.

RETENTION AND DISPOSAL:

Service Agreements are destroyed (shredded) 180 days after the student has completed their obligation to the Federal Government. The Database consisting of name, university, degree information, and hiring agency, is maintained indefinitely by graduating class for reporting and statistical purposes. SFS is currently in the process of establishing a Records Retention Schedule with NARA.

SYSTEM MANAGER AND ADDRESS:

Associate Director, Human Resources Products and Services Division, Office of Personnel Management, Room 4310, 1900 E Street, NW., Washington, DC 20415–4000.

NOTIFICATION AND RECORD ACCESS PROCEDURE:

Individuals wishing to determine whether this system of records contains information about them may do so by writing to FOI/P, OPM, ATTN: FOIA Officer, 1900 E Street, NW., Room 5415, Washington, DC 20415–7900.

Individuals must furnish the following information for their records to be located:

1. Full name.

2. Date and place of birth.

3. Social Security Number.

4. Signature.

5. Available information regarding the type of information requested.

6. The reason why the individual believes this system contains information about him/her.

7. The address to which the information should be sent.

Individuals requesting access must also comply with OPM's Privacy Act regulations regarding verification of

identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of records about them should write to Kathryn Roberson, Manager, SFS, 8610 Broadway, Rm 305, San Antonio, TX 78217 and furnish the following information for their records to be located:

1. Full name.
2. Date and place of birth.
3. Social Security Number.
4. Signature.
5. Precise identification of the information to be amended.

Individuals requesting amendment must also follow OPM's Privacy Act regulations regarding verification of identity and amendment to records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

1. The individual to whom the information applies.

SYSTEM EXEMPTIONS:

None.

[FR Doc. E9–20092 Filed 8–20–09; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2009–60; Order No. 280]

Global Expedited Package Services Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add a Global Expedited Package Services 1 (GEPS 1) contract to the Competitive Product List. This notice addresses procedural steps associated with this filing.

DATES: Comments are due August 25, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On August 13, 2009, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services 1 (GEPS 1) contract.[1] GEPS 1 provides volume-based incentives for mailers that send large volumes of Express Mail International (EMI) and/or Priority Mail International (PMI). The Postal Service believes the instant contract is functionally equivalent to previously submitted GEPS 1 contracts and is supported by the Governors' Decision filed in Docket No. CP2008–4.[2] Notice at 1. It further notes that in Order No. 86, which established GEPS 1 as a product, the Commission held that additional contracts may be included as part of the GEPS 1 product if they meet the requirements of 39 U.S.C. 3633, and if they are functionally equivalent to previously submitted GEPS 1 contracts.[3] Notice at 1–2.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contract is in accordance with Order No. 86. The term of the instant contract is 1 year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received.

In support of its Notice, the Postal Service filed four attachments as follows:

1. *Attachment 1*—An application for non-public treatment of materials to maintain the contract and supporting documents under seal;

2. *Attachment 2*—A redacted copy of Governors' Decision No. 08–7 which establishes prices and classifications for GEPS contracts;

3. *Attachment 3*—A redacted copy of the contract; and

4. *Attachment 4*—A certified statement required by 39 CFR 3015.5(c)(2).

Functional equivalency. The Postal Service asserts that the instant contract is functionally equivalent to prior GEPS 1 contracts. It contends that the instant contract satisfies the pricing formula and classification system established in Governors' Decision No. 08–7 and, except for tender locations, is the same as the contract in Docket No. CP2009–50.[4] *Id.* at 3. The Postal Service incorporates by reference the arguments made for functional equivalence in Docket No. CP2009–50 with previous GEPS 1 contracts. *Id.* It contends that the instant contract and all GEPS 1 contracts have similar cost and market characteristics. *Id.* The Postal Service also requests that the contract in Docket No. CP2009–50 be considered the baseline for determining functional equivalence with GEPS 1 contracts. *Id.* at 4.

The Postal Service concludes that this contract is in compliance with 39 U.S.C. 3633, and requests that this contract be included within the GEPS 1 product. *Id.*

The Postal Service states that the copy of the instant contract provided with this filing has not been signed by the mailer but the mailer has confirmed that it will sign the contract which will not be altered from the form presented to the Commission. The Postal Service has submitted the contract in this manner in the interest of having it reviewed by the Commission at this time and has committed to file the signed version of the contract upon final execution.

II. Notice of Filing

The Commission establishes Docket No. CP2009–60 for consideration of matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3622 or 3642. Comments are due no later than August 25, 2009. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned filing.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2009–60 for consideration of the issues raised in this docket.

2. Comments by interested persons in these proceedings are due no later than August 25, 2009.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

[1] Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, August 13, 2009 (Notice).

[2] *See* Docket No. CP2008–4, Notice of United States Postal Service of Governors' Decision Establishing Prices and Classifications for Global Expedited Package Services Contracts, May 20, 2008.

[3] *See* Docket No. CP2008–5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008, at 7 (Order No. 86).

[4] *See* Docket No. CP2009–50, Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, July 29, 2009 (Order No. 262).

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–20143 Filed 8–20–09; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28847; File No. 812–13614]

Old Mutual Global Shares Trust, et al.; Notice of Application

August 13, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

SUMMARY: *Summary of Application:* Applicants request an order that would permit (a) certain open-end management investment companies and their series to issue shares (''Shares'') that can be redeemed only in large aggregations (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

Applicants: Old Mutual Global Shares Trust (''Trust''), Old Mutual Global Index Trackers (Pty) Ltd. (''Adviser''), and Foreside Fund Services, LLC (''Distributor'').

DATES: *Filing Dates:* The application was filed on December 16, 2008, and amendments were filed on May 7, 2009, and August 12, 2009.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 8, 2009 and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; *Applicants:* Old Mutual Global Shares Trust and Old Mutual Global Index Trackers (Pty) Ltd., c/o Betserai Tendai Musikavanhu, 144 Katherine Street, Grayson Ridge Office Park, Block A First Floor, Sandton 2196, South Africa, and Foreside Fund Services, LLC, Two Portland Square, First Floor, Portland, ME 04101.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel at (202) 551–6812, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is organized as a Delaware statutory trust and is registered under the Act as an open-end management investment company with multiple series, each of which will offer separate investment portfolios comprised primarily of equity securities. The Trust initially will offer five series (''Initial Funds''). Applicants may establish additional series in the future (''Future Funds,'' together with the Initial Funds, the ''Funds'').[1]

2. The Adviser is a South African private limited company that is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and will serve as the investment adviser to the Initial Funds. In the future, the Adviser may enter into sub-advisory agreements with other investment advisers to act as sub-advisers to particular Funds (''Sub-Advisers''). Each Sub-Adviser will be registered under the Advisers Act. The Distributor is a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and will act as the principal underwriter and distributor for the Creation Units of Shares.

3. Each Fund will hold certain equity securities (''Portfolio Securities'') and financial instruments selected to correspond, before fees and expenses, generally to the performance of a specified equity securities index (''Underlying Index,'' collectively ''Underlying Indices''). Certain of the Underlying Indices may be composed of equity securities of domestic issuers and non-domestic issuers meeting the requirements for trading in U.S. markets (''Domestic Indices''). Other Underlying Indices may be composed of foreign equity securities (''Foreign Indices''). The Initial Funds will track Foreign Indices; Future Funds may track Domestic or Foreign Indices. Funds that track Domestic Indices are referred to as ''Domestic Funds'' and Funds that track Foreign Indices are referred to as ''Foreign Funds.'' No entity that creates, compiles, sponsors or maintains an Underlying Index (''Index Provider'') is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust or a Fund, the Adviser, any Sub-Adviser to or promoter of a Fund, or the Distributor. The Index Provider to the Initial Funds is FTSE Group.

4. The investment objective of each Fund will be to provide investment results that correspond, before fees and expenses, generally to the performance of its Underlying Index. Intra-day values of the Underlying Index will be disseminated every 15 seconds throughout the trading day. A Fund will utilize either a replication or representative sampling strategy, which will be disclosed with regard to each Fund in its prospectus.[2] A Fund using

[1] All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the application. Any Future Fund will be advised by the Adviser or an entity controlled by or under common control with the Adviser.

[2] Applicants represent that each Fund will invest at least 80% of its total assets in the component securities that comprise its Underlying Index (''Component Securities'') or, in the case of Foreign Funds, Component Securities and depositary receipts representing such securities. ''Depositary Receipts'' will typically be American Depositary Receipts, as well as Global Depositary Receipts and Euro Depositary Receipts. Each Fund also may invest up to 20% of its assets in certain futures, options and swap contracts, cash and cash

Continued

a replication strategy will invest in the Component Securities in its Underlying Index in approximately the same proportions as in the Underlying Index. A Fund using representative sampling will hold some, but not necessarily all of the Component Securities of its Underlying Index.[3] Applicants anticipate that a Fund that utilizes a representative sampling strategy will not track the performance of its Underlying Index with the same degree of accuracy as an investment vehicle that invests in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Fund will have a tracking error relative to the performance of its Underlying Index of less than 5 percent.

5. Creation Units are expected to range between 25,000 to 100,000 Shares as will be clearly stated in the relevant Fund's prospectus (''Prospectus'').[4] Applicants expect that the initial price of a Creation Unit will fall in the range of $1,000,000 to $10,000,000. All orders to purchase Creation Units must be placed with the Distributor, by or through a party that has entered into an agreement with the Distributor (''Authorized Participant''). The Distributor will be responsible for transmitting the orders to the Funds. An Authorized Participant must be either: (a) A broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation, a clearing agency registered with the Commission, or (b) a participant in the Depository Trust Company (''DTC'', and such participant, ''DTC Participant''). Shares of the Fund generally will be sold in Creation Units in exchange for an in-kind deposit by the purchaser of a portfolio of securities designated by the Adviser or Sub-Adviser to correspond generally to the performance of the relevant Underlying Index (the ''Deposit Securities''), together with the deposit of a specified cash payment (''Balancing Amount''). The Balancing Amount is an amount equal to the difference between (a) the net asset value (''NAV'') (per Creation Unit) of a Fund and (b) the total aggregate market value (per Creation Unit) of the Deposit Securities.[5] Each Fund may permit, under certain circumstances, a purchaser of Creation Units to substitute cash in lieu of depositing some or all of the Deposit Securities.[6]

6. An investor purchasing or redeeming a Creation Unit from a Fund will be charged a fee (''Transaction Fee'') to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase or redemption of Creation Units.[7] The maximum Transaction Fees relevant to each Fund and the method of calculating such Transaction Fees will be fully disclosed in the Prospectus of such Fund or statement of additional information (''SAI''). The Distributor will be responsible for delivering the Fund's Prospectus to those persons purchasing Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

7. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded on an Exchange. It is expected that one or more member firms of the Listing Exchange will be designated to act as a specialist (''Specialist'') or a market maker (''Market Maker'') and maintain a market for Shares trading on the Listing Exchange. Prices of Shares trading on an Exchange will be based on the current bid/ask market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

8. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). A Specialist or Market Maker, in providing a fair and orderly secondary market for the Shares, also may purchase Creation Units for use in its market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[8] Applicants expect that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Units at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

9. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit generally will receive (a) Portfolio Securities designated to be delivered for Creation Unit redemptions (''Fund Securities'') on the date that the request for redemption is submitted [9] and (b) a ''Cash Redemption Payment,'' consisting of an amount calculated in

equivalents, as well as in stocks not included in its Underlying Index, but which the Adviser or Sub-Adviser believes will help the Fund track its Underlying Index.

[3] Under the representative sampling strategy, stocks are selected for inclusion in a Fund to have aggregate investment characteristics, fundamental characteristics, and liquidity measures similar to those of the Fund's Underlying Index taken in its entirety.

[4] All representations and conditions contained in the application that require a Fund to disclose particular information in the Fund's Prospectus and/or annual report shall be effective with respect to the Fund until the time that the Fund complies with the disclosure requirements adopted by the Commission in Investment Company Act Release No. 28584 (Jan. 13, 2009).

[5] Each Fund will sell and redeem Creation Units only on a ''Business Day'' which is defined as any day that the New York Stock Exchange, the Listing Exchange (defined below), and the custodian of a Fund are open for business, and includes any day that a Fund is required to be open under section 22(e) of the Act. Each Business Day, prior to the opening of trading on the Listing Exchange (defined below), the list of names and amount of each security constituting the current Deposit Securities and the Balancing Amount will be made available. Any national securities exchange (as defined in section 2(a)(26) of the Act) (''Exchange'') on which Shares are listed (''Listing Exchange'') will disseminate, every 15 seconds during its regular trading hours, through the facilities of the Consolidated Tape Association, an amount per individual Share representing the sum of the estimated Balancing Amount and the current value of the Deposit Securities.

[6] Applicants state that in some circumstances or in certain countries, it may not be practicable or convenient, or permissible under the laws of certain countries or the regulations of certain foreign stock exchanges, for a Foreign Fund to operate exclusively on an ''in-kind'' basis. Applicants also note that when a substantial rebalancing of a Fund's portfolio is required, the Adviser or Sub-Adviser might prefer to receive cash rather than stocks so that the Fund may avoid transaction costs involved in liquidating part of its portfolio to achieve the rebalancing.

[7] Where a Fund permits a purchaser to substitute cash in lieu of depositing a portion of the requisite Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Securities, including operational processing and brokerage costs, and part or all of the spread between the expected bid and the offer side of the market relating to such Deposit Securities.

[8] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

[9] As a general matter, the Deposit Securities and Fund Securities will correspond pro rata to the Portfolio Securities held by each Fund, but Fund Securities received on redemption may not always be identical to Deposit Securities deposited in connection with the purchase of Creation Units for the same day. The Funds will comply with the Federal securities laws in accepting Deposit Securities and satisfying redemptions with Fund Securities, including that the Deposit Securities and Fund Securities are sold in transactions that would be exempt from registration under the Securities Act of 1933.

the same manner as the Balancing Amount, although the actual amount of the Cash Redemption Payment may differ if the Fund Securities are not identical to the Deposit Securities on that day. An investor may receive the cash equivalent of a Fund Security in certain circumstances, such as if the investor is constrained from effecting transactions in the security by regulation or policy.

10. No Fund will be marketed or otherwise held out as a traditional open-end investment company or a mutual fund. Instead, each Fund will be marketed as an ''ETF,'' an ''investment company,'' a ''fund,'' or a ''trust.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may purchase or redeem Shares from the Fund in Creation Units only. The same approach will be followed in the SAI, shareholder reports and investor educational materials issued or circulated in connection with the Shares. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to shareholders.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants state that because Creation Units may always be purchased and redeemed at NAV, the market price of the Shares should not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for the Foreign Funds is contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for underlying foreign securities held by the Foreign Funds. Applicants state that delivery cycles for transferring Fund Securities to redeeming investors, coupled with local market holiday schedules, will require a delivery process longer than seven calendar days for the Foreign Funds. Applicants request relief under section 6(c) of the Act from section 22(e) to allow the Foreign Funds to pay redemption proceeds up to fourteen calendar days after the tender of any Creation Unit for redemption. Except as disclosed in the relevant Foreign Fund's Prospectus and/or SAI, applicants expect that each Foreign Fund will be able to deliver redemption proceeds within seven

days.[10] With respect to future Foreign Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances similar to those described in the application exist.

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days needed to deliver the proceeds for the relevant Foreign Fund. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

Section 12(d)(1)

9. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request an exemption to permit management investment companies (''Purchasing Management Companies'') and unit investment trusts (''Purchasing Trusts'') registered under the Act that are not sponsored or advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser and are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds (collectively, ''Purchasing Funds'') to acquire shares of a Fund beyond the limits of section 12(d)(1)(A). Purchasing Funds do not include the Funds. In addition, applicants seek relief to permit a Fund or broker-dealer (''Broker'') that is registered under the Exchange Act to sell Shares to a Purchasing Fund in excess of the limits of section 12(d)(1)(B).

11. Each Purchasing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Purchasing Fund Adviser'') and may be sub-advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a ''Purchasing Fund Sub-Adviser''). Any investment adviser to a Purchasing Management Company will be registered under the Advisers Act. Each Purchasing Trust will be sponsored by a sponsor (''Sponsor'').

12. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in section 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

13. Applicants believe that neither the Purchasing Funds nor a Purchasing Fund Affiliate would be able to exert undue influence over the Funds.[11] To limit the control that a Purchasing Fund may have over a Fund, applicants propose a condition prohibiting a Purchasing Fund Adviser or a Sponsor, any person controlling, controlled by, or under common control with a Purchasing Fund Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Purchasing Fund Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Purchasing Fund Adviser or Sponsor (''Purchasing Fund Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Purchasing Fund Sub-Adviser, any person controlling, controlled by or under common control with the Purchasing Fund Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Purchasing Fund Sub-Adviser or any person controlling, controlled by or under common control with the Purchasing Fund Sub-Adviser (''Purchasing Fund Sub-Advisory Group'').

14. Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Purchasing Fund or Purchasing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Purchasing Fund Adviser, Purchasing Fund Sub-Adviser, employee or Sponsor of a Purchasing Fund, or a person of which any such officer, director, member of an advisory board, Purchasing Fund Adviser, Purchasing Fund Sub-Adviser, employee, or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

15. Applicants assert that the proposed conditions address any concerns regarding excessive layering of fees. The board of directors or trustees of any Purchasing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will find that the advisory fees charged to the Purchasing Management Company are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Fund in which the Purchasing Management Company may invest. In addition, except as provided in condition 12, a Purchasing Fund Adviser or a trustee (''Trustee'') or Sponsor of a Purchasing Trust will, as

[10] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1.

[11] A ''Purchasing Fund Affiliate'' is a Purchasing Fund Adviser, Purchasing Fund Sub-Adviser, Sponsor, promoter, and principal underwriter of a Purchasing Fund, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

applicable, waive fees otherwise payable to it by the Purchasing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received by the Purchasing Fund Adviser or Trustee or Sponsor or an affiliated person of the Purchasing Fund Adviser, Trustee or Sponsor, from the Funds in connection with the investment by the Purchasing Fund in the Fund. Applicants state that any sales loads or service fees charged with respect to shares of a Purchasing Fund will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.[12]

16. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund may acquire securities of any investment company or company relying on sections 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act. To ensure that Purchasing Funds comply with the terms and conditions of the requested relief from section 12(d)(1), any Purchasing Fund that intends to invest in a Fund in reliance on the requested order will enter into an agreement with the Fund (''Purchasing Fund Agreement'') requiring the Purchasing Fund to adhere to the terms and conditions of the requested order. The Purchasing Fund Agreement also will include an acknowledgement from the Purchasing Fund that it may rely on the requested order only to invest in the Funds and not in any other investment company.

17. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by a Purchasing Fund. To the extent that a Purchasing Fund purchases Shares in the secondary market, a Fund would still retain its ability to reject any initial investment by a Purchasing Fund in excess of the limits of section 12(d)(1)(A) by declining to enter into a Purchasing Fund Agreement with the Purchasing Fund.

Sections 17(a)(1) and (2) of the Act

18. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person (''Second-Tier Affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities.

19. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit persons to effectuate in-kind purchases and redemptions with a Fund when they are affiliated persons of the Fund or Second-Tier Affiliates solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more other registered investment companies (or series thereof) advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser.

20. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from purchasing or redeeming Creation Units through ''in-kind'' transactions. The deposit procedures for both in-kind purchases and in-kind redemptions of Creation Units will be the same for all purchases and redemptions. Deposit Securities and Fund Securities will be valued in the same manner as Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the specified affiliated persons, or Second-Tier Affiliates, of a Fund to effect a transaction detrimental to other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Funds.

21. Applicants also seek relief from section 17(a) to permit a Fund that is an affiliated person of a Purchasing Fund to sell its Shares to and redeem its Shares from a Purchasing Fund, and to engage in the accompanying in-kind transactions with the Purchasing Fund. Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by a Purchasing Fund for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund.[13] Applicants believe that any proposed transactions directly between the Funds and Purchasing Funds will be consistent with the policies of each Purchasing Fund. The purchase of Creation Units by a Purchasing Fund directly from a Fund will be accomplished in accordance with the investment restrictions of any such Purchasing Fund and will be consistent with the investment policies set forth in the Purchasing Fund's registration statement. The Purchasing Fund Agreement will require any Purchasing Fund that purchases Creation Units directly from a Fund to represent that the purchase of Creation Units from a Fund by a Purchasing Fund will be accomplished in compliance with the investment restrictions of the Purchasing Fund and will be consistent with the investment policies set forth in the Purchasing Fund's registration statement.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:[14]

ETF Relief

1. As long as the Funds operate in reliance on the requested order, the Shares of each Fund will be listed on an Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Each Fund's Prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable, and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site maintained for each Fund, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for

[12] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

[13] Applicants acknowledge that receipt of compensation by (a) an affiliated person of a Purchasing Fund, or an affiliated person of such person, for the purchase by the Purchasing Fund of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Purchasing Fund may be prohibited by section 17(e)(1) of the Act. The Purchasing Fund Agreement also will include this acknowledgment.

[14] *See* note 4, *supra.*

each Fund: (a) The prior Business Day's NAV and the mid-point of the bid-ask spread at the time of the calculation of NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the Bid/Ask Price at the time of calculation of the NAV against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

4. The Prospectus and annual report for each Fund also will include: (a) The information listed in condition 3(b), (i) in the case of the Fund's Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the Fund): (i) The cumulative total return and the average annual total return based on NAV and Bid/Ask Price, and (ii) the cumulative total return of the relevant Underlying Index.

5. Each Fund's Prospectus will clearly disclose that, for purposes of the Act, Shares are issued by the Fund, which is a registered investment company, and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into a Purchasing Fund Agreement with the Fund regarding the terms of the investment.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based exchange-traded funds.

Section 12(d)(1) Relief

7. The members of a Purchasing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of a Purchasing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If as a result of a decrease in the outstanding Shares of a Fund, a Purchasing Fund's Advisory Group or a Purchasing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25% of the outstanding Shares of a Fund, it will vote its Shares in the same proportion as the vote of all other holders of the Shares. This condition will not apply to the Purchasing Fund's Sub-Advisory Group with respect to a Fund for which the Purchasing Fund's Sub-Adviser or a person controlling, controlled by, or under common control with the Purchasing Fund Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

8. No Purchasing Fund or Purchasing Fund Affiliate will cause any existing or potential investment by the Purchasing Fund in a Fund to influence the terms of any services or transactions between the Purchasing Fund or Purchasing Fund Affiliate and the Fund or a Fund Affiliate.

9. The board of directors or trustees of a Purchasing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Purchasing Fund Adviser and Purchasing Fund Sub-Adviser are conducting the investment program of the Purchasing Management Company without taking into account any consideration received by the Purchasing Management Company or a Purchasing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

10. No Purchasing Fund or Purchasing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

11. Before investing in the Shares of a Fund in excess of the limits in section 12(d)(1)(A), each Purchasing Fund and the Fund will execute a Purchasing Fund Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers or Sponsors or Trustees, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Purchasing Fund will notify such Fund of the investment. At such time, the Purchasing Fund will also transmit to the Fund a list of names of each Purchasing Fund Affiliate and Underwriting Affiliate. The Purchasing Fund will notify the Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The relevant Fund and the Purchasing Fund will maintain and preserve a copy of the order, the Purchasing Fund Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

12. The Purchasing Fund Adviser, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Purchasing Fund in an amount at least equal to any compensation (including fees received under any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Purchasing Fund Adviser, Trustee or Sponsor, or an affiliated person of the Purchasing Fund Adviser, Trustee or Sponsor, other than any advisory fees paid to the Purchasing Fund Adviser, Trustee or Sponsor, or its affiliated person by a Fund, in connection with the investment by the Purchasing Fund in the Fund. Any Purchasing Fund Sub-Adviser will waive fees otherwise payable to the Purchasing Fund Sub-Adviser, directly or indirectly, by the Purchasing Management Company in an amount at least equal to any compensation received from a Fund by the Purchasing Fund Sub-Adviser, or an affiliated person of the Purchasing Fund Sub-Adviser, other than any advisory fees paid to the Purchasing Fund Sub-Adviser or its affiliated person by the Fund, in connection with any investment by the Purchasing Management Company in a Fund made at the direction of the Purchasing Fund Sub-Adviser. In the event that the Purchasing Fund Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Purchasing Management Company.

13. Any sales charges and/or service fees charged with respect to shares of a Purchasing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

14. Once an investment by a Purchasing Fund in the Shares of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of directors or trustees of a Fund (''Board''), including a majority of the directors or trustees that are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested Board members''), will determine that any consideration paid by the Fund to a Purchasing Fund or Purchasing Fund Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (b) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned.

This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

15. The Board, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by a Fund in an Affiliated Underwriting once an investment by the Purchasing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Purchasing Fund in a Fund. The Board will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by a Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

16. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings, once an investment by a Purchasing Fund in the Shares of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

17. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Purchasing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Purchasing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Purchasing Management Company.

18. No Fund will acquire securities of any investment company or companies relying on sections 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20065 Filed 8–20–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60500; File No. SR–ISE–2009–62]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify Certain Exchange Rules

August 13, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 7, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') to amend (sic) certain rules in order to clarify the definition of an options class, to clarify that exercise limit exemptions will apply to all members, and to clarify how a member may aggregate its long or short positions for purposes of filing these limits with the Exchange. The text of the proposed rule change is available on the Exchange's Web site, *http://www.ise.com*, at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rules 100(a)(6), 100(a)(12), 414, 415, and 504 to clarify the definition of an options class, to clarify that exercise limit exemptions will apply to all members, and to clarify how a member may aggregate its long or short positions for purposes of filing its reports of these limits with the Exchange. The proposed rule changes are similar to the rules of other SROs[3] and will provide consistency and clarity. The proposed rule makes no substantive changes to the rules.

The Exchange is seeking to amend the definition of options class in Rule 100(a)(6) to mean all options contracts covering the same underlying security. Currently, the definition defines an options class to be all contracts of the same type, which is either puts or calls on the same underlying security. This change will make the definition consistent with the way the term is used throughout the rest of the Exchange rules. Additionally, the Exchange is seeking to amend the definition of a covered short position in Rule 100(a)(12) and to amend Rule 504 regarding series listings so that the proposed change to the definition of options class in 100(a)(6) does not

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* American Stock Exchange Rule 906; Nasdaq OMX PHLX Rule 1003; FINRA Rule 2360(b)(5).

change the substance of those provisions.

Additionally, the Exchange is seeking to amend Rule 414(c) to clarify that the exercise limit exemptions will apply to any member that is granted an exemption to position limits under the rule.

Lastly, the Exchange is seeking to amend Rule 415 to specify that when calculating an aggregate long or short position in options, members need to combine (i) long positions in put options with short positions in call options, and (ii) short positions in put options with long positions in call options.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6)[7] thereunder.

The proposed rule change makes no substantive changes to the rules. The Exchange believes that this proposed rule change does not raise any new, unique or substantive issues. For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a ''noncontroversial'' rule change under paragraph (f)(6) of Rule 19b–4.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2009–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–62 and should be submitted on or before September 11, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20061 Filed 8–20–09; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60503; File No. SR–BX–2009–046]

Self-Regulatory Organizations; Boston Stock Exchange, Incorporated [sic]; Notice of Filing of Proposed Rule Change To Further Extend the Temporary Cap on Certain Fees for Members

August 14, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 2009, NASDAQ OMX BX, Inc. (''BX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX proposes to extend the temporary cap on fees charged for OUCH ports to the Equities Market due to unanticipated delays in developing and implementing an anti-internalization function. The text of the proposed rule change is below. Proposed new language is *italicized*.

* * * * *

7015. Access Services

The following charges are assessed by the Exchange for ports to establish connectivity to the NASDAQ OMX BX Equities Market, as well as ports to receive data from the NASDAQ OMX BX Equities Market:

- $400 per month for each port pair, other than Multicast ITCH® data feed pairs, for which the fee is $1000 per month. Additional OUCH port pairs beyond 15 are at no cost for the months of May, June and July 2009. *For August 2009, OUCH port pairs beyond 15 will be assessed a pro rata charge on the basis of the number of trading days during the month during which the anti-internalization functionality introduced by Equity Rule 4757(a)(3) is available to market participants.*
- *Internet Ports:* An additional $200 per month for each Internet port that requires additional bandwidth.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. BX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX is proposing to extend the temporary modification to its pricing for OUCH ports, which provide connectivity to the NASDAQ OMX BX Equities Market. In SR–BX–2009–023 and SR–BX–2009–036,[3] BX filed immediately effective rule changes to eliminate fees for a member firm's OUCH ports in excess of 15 for the months of May, June, and July 2009. In those filings, BX noted member firms had complained that, because BX does not have an anti-internalization capability, they must purchase additional OUCH ports that they would otherwise not need to purchase solely to avoid unwanted execution against their customer orders. Internalization occurs when a member firm's customer order is posted on the market and executed all or in part by the same member firm. Member firms must avoid internalization of certain customer orders to avoid violating rules and regulations of the Employee Retirement Income Security Act that preclude and/or limit managing broker-dealers of such customer accounts from trading as principal with orders generated for those accounts. Currently, some member firms are only able to avoid internalization by purchasing additional OUCH ports through which they place all order flow that must not be internalized. Such additional ports have discrete MPID numbers, which allow these member firms to identify the orders and avoid internalization.

BX determined to limit the number of OUCH port pairs that a member is charged monthly to 15 for the months of May, June, and July 2009, so that those firms affected by BX's lack of an anti-internalization function were provided relief until BX could implement such a function. BX noted in its rule change that it would either seek to remove the cap language from the rule upon its expiration or alternatively would seek to extend the cap until such time the anti-internalization function could be implemented. BX has now adopted Equity Rule 4757(a)(3),[4] through which BX will provide anti-internalization functionality, and expects to implement that functionality on or about August 10, 2009. As such, BX is proposing to further extend the temporary modification of its OUCH port pair pricing into August 2009, assessing a pro rata charge on the basis of the number of trading days during the month during which the anti-internalization functionality introduced by Equity Rule 4757(a)(3) is available to market participants. BX will then seek to remove the cap language from the rule. Thus, if the functionality is introduced on August 10, the fee for August would be 76.19% of the fee otherwise assessable, reflecting that the functionality would be available for 16 out of the 21 trading days during the month.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls. The proposed fee change applies uniformly to all BX members. BX has determined that temporarily instituting a cap on fees for OUCH ports in excess of 15 will provide relief to member firms required to purchase additional ports solely due to BX's lack of an anti-internalization function.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[3] Securities Exchange Act Release No. 59894 (May 8, 2009), 74 FR 23000 (May 15, 2009) (SR–BX–2009–023); Securities Exchange Act Release No. 60257 (July 7, 2009), 74 FR 34060 (July 14, 2009) (SR–BX–2009–036).

[4] Securities Exchange Act Release No. 60383 (July 24, 2009), 74 FR 38065 (July 30, 2009) (SR–BX–2009–042).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(a)(ii).

[8] 17 CFR 240.19b–4(f)(2).

Electronic Comments

• Use the Commission's Internet comment form *http://www.sec.gov/rules.sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2009–046 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–046. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2009–046 and should be submitted on or before September 11, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20063 Filed 8–20–09; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60501; File No. SR–NYSE–2009–80]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Public Float Requirement for Initial Public Offerings

August 13, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 5, 2009, New York Stock Exchange LLC (the ''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its market value of publicly-held shares requirement for initial public offerings (''IPOs''), spin-offs and companies listed under the Exchange's Affiliated Company standard. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 102.01B of the Manual requires that a company listing at the time of its IPO or as a result of a spin-off or under the Affiliated Company standard of Section 102.01C(iii) must demonstrate an aggregate market value of publicly-held shares (''public float'') of $60 million at the time of listing. The Exchange proposes to reduce this requirement from $60 million to $40 million. A reduction in the public float requirement to $40 million for companies that are new to the public markets will enable companies to list that would not meet the current $60 million public float requirement but that otherwise qualify to list. The proposed lowering of the public float requirement would be applicable to real estate investment trusts listed under Section 102.05, but not closed-end funds listed under Section 102.04 (which will continue to be subject to a $60 million public float requirement) or special purpose acquisition companies (''SPACs'') listed under Section 102.06 (which are subject to a $200 million public float requirement). As closed-end funds and SPACs are subject to their own separate listing standards and have characteristics that make them significantly different from operating companies, the Exchange does not believe that it is unfairly discriminatory to apply different public float requirements to them than are applicable to operating companies.

The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest and does not raise any novel regulatory issues. The Exchange notes that the proposed $40 million public float requirement is higher than the public float requirements under the various Nasdaq Global Market initial listing standards, which range from $8 million to $20 million.

The Exchange believes that the proposed amendment does not affect the status of NYSE listed securities under Securities Exchange Act Rule 3a51–1(a) (the ''Penny Stock Rule''),[4] as the amended standards satisfy the requirements of Exchange Act Rule 3a51–1(a)(2).[5]

All of the NYSE's equity listing standards meet the stock price and distribution requirements of Rule 3a51–1(a)(2), as all of the standards require

[4] 17 CFR 240.a51–1(a).

[5] 17 CFR 240.a51–1(a)(2).

companies to have a minimum stock price of $4.00 and at least 1.1 million publicly-held shares at the time of initial listing. Companies are generally required to have 400 round lot holders at the time of listing, except that companies listing in connection with a transfer or quotation listing may list on the basis of (a) 2,200 total stockholders plus an average monthly trading volume of 100,000 shares (for the most recent six months) or (b) 500 total stockholders plus an average monthly trading volume of one million shares (for the most recent 12 months).

The Exchange believes that, in addition to meeting the stock price and distribution requirements of Rule 3a51–1(a)(2), all of the Exchange's equity listing standards meet or exceed the other applicable requirements of that rule. The three-year earnings requirement of the Earnings Test exceeds the net income prong of Rule 3a51–1(a)(2)(i)(A)(3) and the operating history prong of Rule 3a51–1(a)(2)(i)(B). The $50 million stockholders' equity requirement of the Assets and Equity Test exceeds the $5 million in stockholders' equity required by Rule 3a51–1(a)(2)(i)(A)(1) and its $150 million global market capitalization requirement exceeds the $50 million required by the market value of listed securities prong of Rule 3a51–1(a)(2)(i)(B). The Exchange's Valuation/Revenue Test, Pure Valuation/Revenue Test, Affiliated Company Test and Assets and Equity Test require a global market capitalization of $500 million, $750 million, $500 million and $150 million, respectively. The Exchange notes that Rule 3a51–1(a)(2)(i)(A)(2) requires a market value of listed securities of $50 million calculated over a 90 consecutive day period, while the global market capitalization requirements of the Valuation/Revenue Test, Pure Valuation/Revenue Test, Affiliated Company Test and Assets and Equity Test are measured at a single point in time. However, the $50 million in market value of listed securities requirement of Rule 3a51–1(a)(2)(i)(A)(2) is far lower than the global market capitalization requirements of the Exchange's Valuation/Revenue Test, the Pure Valuation/Revenue Test, the Affiliated Company Test and the Assets and Equity test. Consequently, the Exchange believes that the global market capitalization requirements of the Valuation/Revenue Test, the Pure Valuation/Revenue Test, the Affiliated Company Test and the Assets and Equity Test are comparable to, and arguably more stringent than, the $50 million market value of listed securities requirement of Rule 3a51–1(a)(2).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[6] of the Securities Exchange Act of 1934 (the ''Act''),[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed amendment is consistent with the investor protection objectives of the Act in that the proposed public float requirement is set at a high enough level that only companies that are suitable for listing on the Exchange will qualify to list. As closed-end funds and SPACs are subject to their own separate listing standards and have characteristics that make them significantly different from operating companies, the Exchange does not believe that it is unfairly discriminatory to apply different public float requirements to them than are applicable to operating companies.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] The Exchange's initial listing standards for equity listings after adoption of the proposed amendment will continue to be as stringent as, or more stringent than, those of other national securities exchanges. Consequently, the Exchange believes the proposed rule change does not raise any novel regulatory issues or significantly affect the protection of investors or the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2009–80 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78a.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, the Commission notes that Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

All submissions should refer to File Number SR–NYSE–2009–80. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–80 and should be submitted on or before September 11, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20130 Filed 8–20–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60499; File No. SR–CBOE–2009–007]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Tied Hedge Transactions

August 13, 2009.

I. Introduction

On February 13, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange) filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow hedging stock, security futures, or futures contract positions to be represented currently with option facilitations or solicitations in the trading crowd (''tied hedge'' orders). The proposed rule change was published for comment in the **Federal Register** on March 2, 2009.[3] The Commission received one comment letter on the proposal.[4] CBOE responded to the comment letter on August 11, 2009.[5] CBOE filed Amendment No. 1 to the proposed rule change on August 11, 2009. This notice and order provides notice of filing of Amendment No. 1 to the proposed rule change, and grants accelerated approval to the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

CBOE Rule 6.74 generally sets forth the procedures by which a floor broker may cross an order with a contra-side order. Transactions executed pursuant to Rule 6.74 are subject to the restrictions of paragraph (e) of Rule 6.9, *Solicited Transactions,* which prohibits trading based on knowledge of imminent undisclosed solicited transactions (commonly referred to as ''anticipatory hedging'').

A. Anticipatory Hedging Rule

CBOE Rule 6.9, adopted in 1994, was originally designed to preserve the right to solicit orders in advance of submitting a proposed trade to the crowd, while at the same time assuring that orders that are the subject of a solicitation are exposed to the auction market in a meaningful way.[6] In addition to requiring disclosure of orders and clarifying the priority principles applicable to solicited transactions, CBOE Rule 6.9 provides that it is inconsistent with just and equitable principles of trade for any member or associated person who has knowledge of all the material terms of an original order and a solicited order (including a facilitation order) that matches the original order's price to enter an order to buy or sell an option of the same class as any option that is the subject of the solicitation prior to the time the original order's terms are disclosed to the crowd or the execution of the solicited transaction can no longer reasonably be considered imminent. This prohibition extends to orders to buy or sell the underlying security or any ''related instrument.''[7]

B. Proposed Exception to Anticipatory Hedging Rule

In order to address CBOE's perceived concerns associated with increased volatility and decreased liquidity and to more effectively compete with the over-the-counter market,[8] the Exchange is now proposing to adopt a limited exception to its anticipatory hedging restrictions that would permit the representation of hedging stock positions in conjunction with option orders, including complex orders, in the options trading crowd (a ''tied hedge'' transaction). The Exchange believes this limited exception would be consistent with the original design of CBOE Rule 6.9(e), but would set forth a more practicable approach that would facilitate hedging in today's trading environment while still encouraging meaningful competition among upstairs and floor traders.[9]

With a tied hedge transaction, Exchange members would be permitted to first hedge an option and then forward the option order and the hedging position to an Exchange floor broker with instructions to represent the option order together with the hedging position to the options trading crowd. Under the proposal, the original option order must be within designated size parameters, which would be determined by the Exchange and could not be smaller than 500 contracts. In addition, the original option order must be in a

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59435 (February 23, 2009), 74 FR 9115 (''Notice'').

[4] *See* Letter from Michael J. Simon, Secretary, International Securities Exchange, LLC (''ISE''), to Nancy M. Morris, Secretary, Commission dated March 25, 2009 (''ISE Letter'').

[5] *See* Letter from Jennifer M. Lamie, Assistant General Counsel, CBOE, to Elizabeth M. Murphy, Secretary, Commission dated August 11, 2009 (''CBOE Letter'').

[6] According to the Exchange, if the orders that comprise a solicited transaction are not suitably exposed to the order interaction process on the CBOE floor, the execution of such orders would not be consistent with CBOE rules designed to promote order interaction in an open-outcry auction. For example, CBOE Rule 6.43, *Manner of Bidding and Offering,* requires bids and offers to be made at the post by public outcry, and Rule 6.74 imposes specific order exposure requirements on floor brokers seeking to cross buy orders with sell orders. *See* Notice, *supra* note 3, at 9116.

[7] CBOE Rule 6.9(e) defines ''related instrument'' to mean ''in reference to an index option, an order to buy or sell securities comprising ten percent or more of the component securities in the index or an order to buy or sell a futures contract on any economically equivalent index. With respect to an SPX option, an OEX option is a related instrument, and vice versa.''

[8] *See* Notice, *supra* note 3, at 9116 (discussing CBOE's rationale behind its proposal).

[9] *See id.* at 9120.

class designated as eligible for a tied hedge transaction. Eligible hedging positions would be determined by the Exchange for each eligible class and may include (i) the same underlying stock applicable to the option order, (ii) a security future overlying the same stock applicable to the option order, or (iii) in reference to an option on an index, exchange-traded fund (''ETF''), or options on HOLding Company Depository ReceiptS (''HOLDRS''), a related instrument may be used as a hedge. A ''related instrument'' would mean, in reference to an index option, securities comprising ten percent or more of the component securities in the index or a futures contract on any economically equivalent index applicable to the option order. With respect to SPX, OEX would be an economically equivalent index, and vice versa.[10] A ''related instrument'' would mean, in reference to an ETF or HOLDRS option, a futures contract on any economically equivalent index applicable to the ETF or HOLDRS underlying the option order.[11]

The proposal would require that the entire hedging position, which could not exceed the options order on a delta basis, be brought without undue delay to the trading crowd, announced to the trading crowd concurrently with the option order, offered to the crowd in its entirety, and offered at the execution price received by the member or member organization introducing the order to any in-crowd market participant who has established parity or priority for the related options.

In-crowd market participants that participate in the option transaction must participate in the hedging position on a proportionate basis and would not be permitted to prevent the option transaction from occurring by giving a competing bid or offer for one component of the tied hedge order.

In addition, the proposal would require that, prior to entering tied hedge orders on behalf of customers, the member must deliver to the customer a one-time written notification informing the customer that its order may be executed using the Exchange's tied hedge procedures. A member also would be required to create an electronic record of the tied hedge order in a form and manner prescribed by the Exchange.

C. Amendment No. 1

In Amendment No. 1, the Exchange reflected in rule text the priority treatment applicable to all tied hedge transactions (regardless of whether the original order is a simple order or a complex order) by clarifying that such transactions will be treated the same as complex orders for purposes of CBOE's open outcry allocation and reporting procedures.[12] CBOE also clarified that where an original order is a simple order, the initial execution of the option leg will not qualify for the ''complex trade'' exception from the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Options Linkage Plan'').[13] The text of Amendment No. 1 is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

III. Summary of Comments and CBOE Response

The Commission received one comment on the proposed rule change from the ISE.[14] CBOE submitted a letter to the Commission responding to ISE's comment letter.[15]

ISE argued that the proposed tied hedge transaction was similar to front-running and may disadvantage the trading crowd competing for the order in the auction process as well as the order being executed.[16] ISE believed that CBOE's proposal would allow a member with knowledge of a pending transaction to have an advantage over others in the auction market process, which could result in less competition and worse prices for customers.[17]

In response, CBOE explained that it did not believe a firm that establishes a hedge position pursuant to the proposal would be taking advantage of material, nonpublic information as contemplated by the front-running prohibitions.[18] Rather, CBOE noted that its proposal provides the options trading crowd with the same access to a hedge as the solicited party, thereby allowing the crowd to compete on the same terms, because the tied hedge position would be required to be brought without undue delay to the trading crowd and announced concurrently with the option order, offered to the crowd in its entirety, and offered at the execution price received by the member to any in-crowd market participant who establishes parity or priority for the related option order.[19] The Exchange asserted its belief that the tied hedge proposal may result in narrow spreads and improved customer prices.[20]

In addition, ISE expressed concern that the proposed hedging activity may cause movement in the price of the underlying security and consequently the option, resulting in a worse price for the options customer.[21] In response, CBOE explained that its proposal attempts to address this concern by providing a mechanism to facilitate hedging that it believes will not be detrimental to the options orders being hedged nor the auction market.[22] CBOE noted that participants will continue to be governed by, among other things, their best execution responsibilities.

ISE further opined that CBOE's proposal, because it does not permit the trading crowd to execute the options order without taking a proportionate share of the hedge, could increase internalization and lead to less vigorous

[10] The proposed definition of a ''related instrument'' with respect to an index option is modeled after the definition that currently applies under Rule 6.9(e).

[11] For example, a tied hedge order involving options on the iShares Russell 2000 Index ETF might involve a hedge position in the underlying ETF, security futures overlying the ETF, or futures contracts overlying the Russell 2000 Index.

[12] The Commission notes that, while a tied hedge may be treated the same as a complex order for purposes of CBOE's intra-market priority, an original single-sided customer order would not otherwise constitute a complex order solely by virtue of being packaged into a tied hedge transaction. Accordingly, when a single-sided customer order is packaged into a tied hedge transaction, the execution of the option leg will not qualify for the ''complex trade'' exception from the Options Linkage Plan.

[13] On July 28, 2000, the Commission approved the Options Linkage Plan as a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the American Stock Exchange LLC (n/k/a NYSE Amex LLC), CBOE, and International Securities Exchange, LLC (''ISE''). *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (File No. 4–429). Subsequently, Philadelphia Stock Exchange, Inc. (n/k/a NASDAQ OMX PHLX, Inc.), Pacific Exchange, Inc. (n/k/a NYSE Arca), Boston Stock Exchange, Inc. (n/k/a NASDAQ OMX BX, Inc.), and The NASDAQ Stock Market LLC joined the Options Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (File No. 4–429); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000) (File No. 4–429); 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004) (File No. 4–429); and 57545 (March 21, 2008), 73 FR 16394 (March 27, 2008) (File No. 4–429). The Commission recently approved a new national market system plan regarding intermarket options linkage, the Options Order Protection and Locked/Crossed Market Plan, which carries over the complex order exception from the Options Linkage Plan. *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2008) (File No. 4–546). *See also* Securities Exchange Act Release No. 60187 (June 29, 2009), 74 FR 32664 (July 8, 2009) (SR–CBOE–2009–040) (notice of filing of CBOE's new Options Linkage rules).

[14] *See* ISE Letter, *supra* note 4.

[15] *See* CBOE Letter, *supra* note 5.

[16] *See* ISE Letter, *supra* note 4, at 1.

[17] *See id.* at 1.

[18] *See* CBOE Letter, *supra* note 5, at 2–3.

[19] *See id.* at 3.

[20] *See id.* at note 5.

[21] *See* ISE Letter, *supra* note 4, at 1–2.

[22] *See* CBOE Letter, *supra* note 5, at 3.

competition for price improvement.[23] ISE believed that requiring the crowd to take the hedge at the same price will prevent the crowd from giving the options customer the best price for its options transaction. In response, CBOE stated that the requirement to participate in the entire package is designed to keep the initiating member and in-crowd market participants on equal footing.[24] CBOE further argued that, since the trading crowd will have access to the same downside protection as the solicited party that executed the hedge position, the crowd should be willing to provide price improvement to the tied hedge order just as much as, if not more than, any other facilitation/solicited order.[25]

ISE also inquired whether CBOE's proposal would prohibit a firm from taking securities from inventory.[26] CBOE clarified that the tied hedge procedure would not permit a firm to take hedging securities from inventory and stated that, in contrast, the proposal explicitly requires that the hedge position be bought or sold following the receipt of an option order and prior to announcing such order in the trading crowd.[27]

ISE noted the possibility under CBOE's proposal that a customer order would not be executable because of market conditions in any of the non-CBOE markets in the underlying.[28] In response, CBOE noted that it recognized that market conditions in any of the non-CBOE market(s) may prevent the execution of the non-options leg(s) at the price(s) agreed upon. CBOE stated that in the event that the conditions in the non-CBOE market continue to prevent the execution of the non-option leg(s) at the agreed price(s), the trade representing the options leg(s) of the tied hedge transaction, as with any other complex order, may ultimately be cancelled in accordance with CBOE's existing rules.[29]

In addition, ISE expressed concern regarding the treatment of CBOE's tied-hedge transactions under the trade-through protections contained in the Options Linkage Plan as well as the contingent trade exemption under Regulation NMS.[30] ISE noted that tied-hedge transactions are not, by default, complex orders unless they meet the definition of a ''complex trade'' under the uniform linkage rules. ISE also commented that tied hedge transactions in which the original customer order is a non-complex order for a single options series that it would not qualify for the qualified contingent trade exception to Rule 611(a) of Regulation NMS. ISE also opined that the exception for complex orders and exemption for qualified contingent trades require that the trades involve multiple legs for the same account, whereas a tied hedge would likely include components for multiple accounts of unrelated parties.

CBOE responded by noting that an in-crowd participant would be trading all legs of a tied hedge package like any other complex order, and, accordingly, it believes that contra-side executions would qualify as complex trades.[31] Further, in Amendment No. 1, CBOE clarified that where an original order is a simple order, the execution of the option leg will not qualify for the ''complex trade'' exception from the Options Linkage Plan.

Further, ISE stated its belief that a tied hedge differs from a complex order in that a stock-option order requires the stock leg to be on the opposite side of the options leg, whereas under CBOE's proposal the stock leg in the tied hedge transaction would be on the same side of the market as the options leg.[32] CBOE's response confirmed that under the proposal the stock leg of the tied hedge package would be on the opposite side from the option leg.[33]

ISE also argued that CBOE should explore further the mechanics of how tied hedge transactions would be executed on CBOE.[34] In particular, ISE inquired as to whether and how participants would execute the hedge in sub-penny increments. ISE also asked whether CBOE intended to impose any limit on who is permitted to participate in the auction for the order.[35]

CBOE responded that, as discussed in the Notice, tied hedge transactions would be treated the same as any other complex order with priority afforded in accordance with the Exchange's existing open outcry allocation and reporting procedures for complex orders.[36] In addition, CBOE stated that tied hedge transactions would also be subject to the existing national best bid or offer (''NBBO'') trade-through requirements for options and stock, as applicable. CBOE noted that it discussed in the Notice that market conditions in any of the non-CBOE markets may prevent the execution of the non-options leg(s) at the price(s) agreed upon and in such case the options leg(s) of the tied hedge transaction, as with any other complex order, may ultimately be cancelled in accordance with CBOE's existing rules.[37] CBOE further explained that in scenarios where the hedge would result in a net sub-penny price, the hedge would be executed with orders at multiple price points necessary to receive the same overall net price in much the same manner that the original stock hedge was obtained.[38]

IV. Discussion

After careful review of the proposed rule change, as amended, the comment letter, and CBOE's response to the comment letter, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[39] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[40] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Further, the Commission believes that CBOE has sufficiently responded to the issues raised by the ISE in its comment letter.

In the Notice, CBOE justified its proposal by explaining that changes in the marketplace have caused it to re-evaluate the effectiveness and efficiency of its anticipatory hedging rule, as well as its previous objections to an exception proposed by another exchange for its proposed equivalent rule in 2003.[41] When the prohibition on

[23] *See* ISE Letter, *supra* note 4, at 2.

[24] *See* CBOE Letter, *supra* note 5, at 3.

[25] *See id.*

[26] ISE Letter, *supra* note 4, at 2.

[27] *See* CBOE Letter, *supra* note 5, at 3.

[28] *See* ISE Letter, *supra* note 4, at 2.

[29] *See* CBOE Letter, *supra* note 5, at 6.

[30] *See* ISE Letter, *supra* note 4, at 3.

[31] *See* CBOE Letter, *supra* note 5, at 4.

[32] *See* ISE Letter, *supra* note 4, at 3.

[33] *See* CBOE Letter, *supra* note 5, at 5.

[34] *See* ISE Letter, *supra* note 4, at 3.

[35] *See id.* at 4.

[36] *See* CBOE Letter, *supra* note 5, at 5.

[37] *See id.*

[38] *See id.*

[39] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[40] 15 U.S.C. 78f(b)(5).

[41] CBOE's proposed exception is similar to an exception that had been proposed in 2003 by the Philadelphia Stock Exchange (''Phlx''). *See* Securities Exchange Act Release No. 48875 (December 4, 2003), 68 FR 70072 (December 16, 2003) (SR–Phlx-2003–75). At the time of the Phlx proposal, which was withdrawn, CBOE commented that the proposal should not be approved unless certain amendments were made. For example, CBOE suggested that the tied hedge procedures should be limited to scenarios where the order cannot be satisfied by the displayed national best

anticipatory hedging was originally adopted, CBOE believed that it was necessary to prevent members and associated persons from using undisclosed information about imminent solicited option transactions to trade the relevant option or any closely-related instrument in advance of persons represented in the relevant options crowd. The Exchange now believes that increased volatility in the markets, as well as the advent of penny trading in underlying stocks and resultant decreased liquidity at the top of each underlying market's displayed national best bid or offer, has made it increasingly difficult for members and member organizations to assess ultimate execution prices and the extent of available stock to hedge related options facilitation/solicitation activities, and to manage that market risk.[42] These circumstances may make it more difficult to obtain a hedge, to quote orders, and to achieve executions. In addition, the Exchange believes that market-makers' trading strategies have evolved to focus less on delta risk and more on volatility.[43] The proposed tied hedge transaction procedures are intended to reflect CBOE's perceived shift by members toward a volatility trading strategy, and to make it more desirable for market makers to compete for orders that are exposed through the solicitation process. The Exchange further expects its proposal to allow members to hedge an original order and thus minimize delta risk and, thus, should provide an opportunity for members to provide customers with tighter quotes to the extent they are able to use the tied hedge procedure to better hedge and compete for orders.[44]

Minimum Size. Under the proposal, the original option order must be within designated tied hedge eligibility size parameters, which could not be smaller than 500 contracts.[45] The minimum order size would apply to an individual original order, and multiple original orders could not be aggregated to satisfy the requirement.[46] The Commission believes that this requirement is reasonable and should limit use of the tied hedge procedures to institutional customers who are in a better position to understand the mechanics of the process and who may benefit from the ability to execute a facilitating hedge on CBOE.[47]

Written Notification. The proposal also requires that, prior to entering tied hedge orders on behalf of customers, the CBOE member must deliver to its customer a one-time written notification informing the customer that his order may be executed using the Exchange's tied hedge procedures and disclosing the terms and conditions contained in the proposed rule. Given the minimum size requirement of 500 contracts per order, the Exchange believes that use of the tied hedge procedures will generally consist of orders for the accounts of institutional or sophisticated, high net worth investors.[48] Given the target audience and the considerable minimum size requirement, the Commission believes that a one-time notification is sufficient and is consistent with similar notification requirements on other exchanges.[49]

Eligible Hedging Positions. The proposed rule would require that the hedging position associated with the tied hedge order be composed of a position that is designated as eligible for a tied hedge transaction. Eligible hedging positions would be determined by the Exchange for each eligible class and may include (i) the same underlying stock applicable to the option order, (ii) a security future overlying the same stock applicable to the option order, or (iii) in reference to an option on an index, ETF or HOLDRS, a ''related instrument'' (as described above). For example, for options overlying XYZ stock, the Exchange may determine to designate the underlying XYZ stock or XYZ security futures or both as eligible hedging positions.[50] The Commission believes that this provision will provide for a definitive hedge that is easily understood by other market participants, and consequently should allow members who may be considering participating in a tied hedge order to evaluate more readily the risk associated with the option in light of the hedge.

Presentation to the Crowd. The proposal would require that the entire hedging position be brought promptly and without ''undue delay'' to the trading crowd. In addition, the proposal would require that the hedging position be announced to the trading crowd concurrently with the option order, offered to the crowd in its entirety, and offered at the execution price received by the member or member organization introducing the order to any in-crowd market participant who has established parity or priority for the related options. In-crowd market participants that participate in the option transaction would be required to participate in the hedging position on a proportionate basis[51] and would not be permitted to prevent the option transaction from occurring by giving a competing bid or offer for one component of the tied hedge order. The Commission believes that these requirements are reasonably designed to encourage access to and participation by the trading crowd in the tied hedge transaction.

Further, while delta estimates may vary slightly, the introducing member would be required to assume a hedging position that does not exceed the equivalent size of the options order on a delta basis.[52] For example, with a tied

bid or offer (''NBBO'') or, for similar reasons, the order is of a significantly larger than average size. *See* letters from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Jonathan G. Katz, Secretary, Commission, dated January 14, 2004 (''CBOE Letter I'') and May 20, 2004 (''CBOE Letter II'').

[42] *See* Notice, *supra* note 3, at 9116.

[43] *See id.* at 9116–17.

[44] *See id.* at 9119.

[45] The designated classes and minimum order size applicable to each class would be communicated to the membership via Regulatory Circular. For example, the Exchange could determine to make the tied hedge transaction procedures available in options class XYZ for orders of 1000 contracts or more. Such a determination would be announced via Regulatory Circular, which would include a cumulative list of all classes and corresponding sizes for which the tied hedge procedures are available.

[46] In determining whether an individual original order satisfies the eligible order size requirement, any complex order must contain one leg alone that is for the eligible order size or greater. This approach to the eligible order size requirement for complex orders is analogous to Rule 6.74(d)(iii), which provides that a complex order must contain one leg alone that is for the eligible order size or greater to be eligible for an open outcry crossing entitlement.

[47] As discussed above *supra* note 41, in commenting on the prior Phlx proposal, CBOE suggested that the tied hedge procedures be limited to scenarios where the order cannot be satisfied by the NBBO or, for similar reasons, the order is of a significantly larger than average size. CBOE's reasoning was that there may not be as much benefit to delaying the representation and execution of smaller orders that may be immediately fillable or executed more quickly by sending an order to the options crowd (as opposed to tying up such an order with stock). *See* CBOE Letter II, *supra* note 41, at 3–4. The Exchange now believes the decreased liquidity available at the NBBO, the frequency with which quotes may flicker, and differing costs associated with accessing liquidity on various markets, as well as for ease of administration, that its proposed 500 contract minimum is sufficient to address these considerations. *See* Notice, *supra* note 3, at 9117.

[48] *See* Notice, *supra* note 3, at 9117.

[49] *See* ISE Rule 716(e)(3) (Solicited Order Mechanism).

[50] As with designated classes and minimum order size, the eligible hedging positions applicable to each class would be communicated to the membership via Regulatory Circular, which would include a cumulative list of all classes and corresponding sizes for which the tied hedge procedures are available.

[51] For example, if an in-crowd market participant's allocation is 100 contracts out of a 500 contract option order (1/5), the same in-crowd market participant would trade 10,000 shares of a 50,000 stock hedge position tied to that option order (1/5).

[52] In the Notice, the Exchange notes that there may be scenarios were the introducing member purchases (sells) less than the delta, *e.g.,* when there is not enough stock is available to buy (sell)

Continued

hedge transaction involving the purchase of 50,000 shares of XYZ stock and the sale of 500 XYZ call contracts with a delta of 100, the order would be considered fully hedged by 50,000 shares of stock. The Commission believes that prohibiting a tied hedge order from being deliberately over-hedged should ensure that such transactions represent bona fide hedging activity and should not deter the willingness of the options crowd to participate in the order.

Priority. The Exchange has not proposed any special priority provisions applicable to tied hedge transactions. Tied hedge transactions would be treated the same as complex orders (regardless of whether the original order was a simple or complex order) for purposes of CBOE's intra-market priority.[53] The Commission notes that while an original single-sided customer order would not constitute a complex order, particularly for purposes of the complex trade exception to the Options Linkage Plan, CBOE's proposal to treat such order when it is packaged into a tied hedge transaction the same as a complex order for the limited purpose of determining CBOE's intra-market priority is reasonable. Among other things, because a tied hedge transaction would be presented to the crowd as a package and crowd participants could only trade with both the order and the hedge on a proportionate basis, such treatment is appropriate under the circumstances with respect to CBOE's intra-market priority.

To the extent applicable and available, tied hedge transactions may also qualify for existing NBBO trade-through exceptions for options and stock, including, for example, the complex trade exception to the Options Linkage Plan (which would apply when the original order is a complex order)[54] and the qualified contingent trade exception to Rule 611(a) for the stock component when an in-crowd participant participates in the transaction.[55]

Further, when a tied hedge transaction is executed, it is possible that market conditions in a non-CBOE market might prevent the execution of the non-options leg(s) at the price(s) agreed upon. In this event, the trade representing the options leg(s) of the tied hedge transaction may ultimately be cancelled in accordance with CBOE's existing rules.[56]

The following example, which CBOE included in the Notice,[57] illustrates the mechanics of a tied hedge transaction:

- The CBOE member initiates a tied hedge based on either a simple or complex original customer order. For example, in a *simple original order,* the introducing member receives a customer order to buy 500 XYZ call options, which has a delta of 100. The introducing member then purchases 50,000 shares of XYZ stock on the NYSE for an average price of $25.03 per share. Once the stock is executed on the NYSE, the introducing member, without undue delay, announces the 500 contract option order along with the 50,000 share tied stock hedge at $25.03 per share to the CBOE trading crowd. For a *complex original order,* the introducing member receives a customer stock-option order to buy 500 XYZ call options and sell 50,000 shares of XYZ stock. The introducing member purchases 50,000 shares of XYZ stock on the NYSE for an average price of $25.03 per share. Once the stock is executed on the NYSE, the introducing member, without undue delay, announces the tied hedge package to the trading crowd.
- The in-crowd market participants would have an opportunity to provide competing quotes for the tied hedge package (but not for the individual component legs of the package).
- The option order and hedging stock would be allocated among the in-crowd market participants that established priority or parity at that price, including the initiating member, in accordance with the allocation algorithm applicable to the options class, with the options leg being executed and reported on CBOE and the stock leg being executed and

at the desired price. In such scenarios, the introducing member would present the stock that was purchased (sold) and share it with the in-crowd market participants on equal terms. This risk of obtaining less than a delta hedge is a risk that exists under the current rules because of the uncertainty that exists when market participants price an option and have to anticipate the price at which they will be able to obtain a hedge. The proposed tied hedge procedures are designed to help reduce this risk, but the initiating member may still be unable to execute enough stock at the desired price. *See* Notice, *supra* note 3, at 9118.

[53] Generally, a complex order may be expressed in any increment and executed at a net debit or credit price with another member without giving priority to equivalent bids (offers) in the individual series legs that are represented in the trading crowd or in the public customer options limit order book provided at least one leg of the order betters the corresponding bid (offer) in the public customer options limit order book. For stock-option orders and security future-option orders, this means that the options leg of the order has priority over bids (offers) of the trading crowd but not over bids (offers) in the public customer options limit order book. In addition, for complex orders with non-option leg(s), such as stock-option orders, a bid or offer is made and accepted subject to certain other conditions, including that the options leg(s) may be cancelled at the request of any member that is a party to the transaction if market conditions in any non-CBOE market(s) prevent the execution of the non-options leg(s) at the agreed price(s). *See, e.g.,* CBOE Rules 6.42, *Minimum Increments for Bids and Offers,* 6.45, *Priority of Bids and Offers—Allocation of Trades,* 6.45A(b), *Allocation of Orders Represented in Open Outcry* (for equity options), 6.45B(b), *Allocation of Orders Represented in Open Outcry* (for index options and options on ETFs), 6.48, *Contract Made on Acceptance of Bid or Offer,* and 6.74. Any crossing participation entitlement would also apply to the tied hedge procedures in accordance with Rule 6.74(d).

[54] Where the original order is a simple order, the execution of the option leg will not qualify for the ''complex trade'' exception from the Options Linkage Plan. Thus, a member could not tie a customer single-sided options order to a hedging position for the sole purpose of availing the tied hedge package to the complex trade exception from the Options Linkage Plan. A ''complex trade'' is defined as: (i) The execution of an order in an option series in conjunction with the execution of one or more related orders in different option series in the same underlying security occurring at or near the same time in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.0) and for the purpose of executing a particular investment strategy; or (ii) the execution of a stock option order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock (''convertible security'') coupled with the purchase or sale of option contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock or convertible security necessary to create a delta neutral position, but in no case in a ratio greater than 8 option contracts per unit of trading of the underlying stock or convertible security established for that series by the Options Clearing Corporation. *See* paragraph (4) of CBOE Rule 6.80, *Definitions* (applicable to Options Linkage), and subparagraph (b)(7) to CBOE Rule 6.83, *Order Protection*. The new Options Linkage Plan was recently approved by the Commission and carries over the complex order exception. *See* Securities Exchange Act Release No. 60405 (July 30, 2009) (File No. 4–546). *See also* Securities Exchange Act Release No. 60187 (June 29, 2009), 74 FR 32664 (July 8, 2009) (notice of filing of CBOE's new Options Linkage rules).

[55] A ''qualified contingent trade'' is defined as a transaction consisting of two or more component orders, executed as agent or principal, where: (i) At least one component order is in an NMS stock; (ii) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent; (iii) the execution of one component is contingent upon the execution of all other components at or near the same time; (iv) the specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) is determined at the time the contingent order is placed; (v) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled; and (vi) any trade-throughs caused by the execution of an order involving one or more NMS stocks (each an ''Exempted NMS Stock Transaction'') is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade. *See* Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008).

[56] *See* paragraph (b) to CBOE Rule 6.48. The Exchange notes that, in the event of a cancellation, members may be exposed to the risk associated with holding the hedge position.

[57] *See* Notice, *supra* note 3, at 9119–20.

reported on the stock market specified by the initiating member.[58]

• The execution of the options leg would have to satisfy CBOE's intra-market priority rules for complex orders (including that the execution price may not be outside the CBOE BBO).

• Where the customer order is a complex order (not a simple order), the tied hedge transaction may qualify as a ''complex trade'' under the Options Linkage Plan in which case the execution of the 500 option contracts with the market participants would not be subject to the NBBO for the particular option series.

• If the crowd participates in the tied hedge transaction, the equities portion of the trade may qualify as a ''qualified contingent trade'' under Regulation NMS. For example, if the crowd takes an equivalent share representing 20,000 shares of stock (from the original 50,000 shares), the market participants would not be subject to the NBBO for the 20,000 shares of underlying XYZ stock that they execute.

• The execution of stock would have to satisfy the intra-market priority rules of the non-CBOE market(s) where the stock is to be executed.

The Commission believes that CBOE has adequately described the mechanics of a proposed tied hedge order, and that the priority treatment afforded to a tied hedge transaction is appropriate and consistent with CBOE's existing priority rules.

V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[59] for approving the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after publication of notice of filing of Amendment No. 1 in the **Federal Register**. In Amendment No. 1, the Exchange revised the proposed rule text to clarify that all tied hedge transactions (regardless of whether the original order was a simple order or a complex order such as a spread, straddle, combination, or stock-option order) will be treated as complex for purposes of CBOE's open outcry allocation and reporting procedures. This treatment of tied hedge transactions was described by CBOE in the Notice.[60] CBOE now proposes to reflect this priority provision in the rule text for the sake of clarity.

CBOE also specified in the proposed rule text that the option and stock legs of a tied hedge transaction may qualify for various NBBO trade-through exceptions but, where the original order is a simple order, the execution of the option leg will not qualify for the ''complex trade'' exception from the Options Linkage Plan.[61] Accordingly, to the extent that a single-sided customer order was packaged to create a tied hedge transaction, such tied hedge would not qualify as a complex order for purposes of the Options Linkage Plan.

The changes proposed in Amendment No. 1, discussed above, seek to clarify the operation of the proposal, particularly with respect to the priority rules applicable to a tied hedge transaction, and do not differ materially from the proposal as noticed in the **Federal Register** on March 2, 2009. Accordingly, the Commission finds that good cause exists to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or

• Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2009–007 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–007. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–007 and should be submitted on or before September 11, 2009.

VII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[62] that the proposed rule change (SR–CBOE–2009–007), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[63]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20062 Filed 8–20–09; 8:45 am]

BILLING CODE 8010–01–P

[58] For example, the introducing member might trade 40% pursuant to an open outcry crossing entitlement (200 options contracts and 20,000 shares of stock) and the remaining balance might be with three different market makers that each participated on 20% of the order (100 options contracts and 10,000 shares of stock per market maker).

[59] 15 U.S.C. 78s(b)(2). Pursuant to Section 19(b)(2) of the Act, the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

[60] *See* Notice, *supra* note 3, at 9119.

[61] This description by CBOE represents a change from the Notice, in which CBOE indicated all tied hedge transactions (regardless of whether the original order was a simple or complex order) would be treated as complex orders, and thus may qualify for the complex trade exception to the Options Linkage Plan. *See* Amendment No. 1.

[62] 15 U.S.C. 78s(b)(2).

[63] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6735]

Certification Related to Aerial Eradication in Colombia Under the Andean Counterdrug Programs Section of the Department of State Foreign Operations and Related Programs Appropriations Act, 2009 (Division H, Pub. L. 111–8)

Pursuant to the authority vested in the Secretary of State and delegated to me, including under the Andean Counterdrug Programs section of the Department of State Foreign Operations and Related Programs Appropriations Act, 2009, (Division H, Pub. L. 111–8), I hereby determine and certify that: (1) The herbicide used for aerial eradication of illicit crops in Colombia is being used in accordance with EPA label requirements for comparable use in the United States and in accordance with Colombian laws; (2) the herbicide, in the manner it is being used, does not pose unreasonable risks or adverse effects to humans or the environment including endemic species; and (3) complaints of harm to health or licit crops caused by such aerial eradication are thoroughly evaluated and fair compensation is being paid in a timely manner for meritorious claims.

This certification shall be published in the **Federal Register**, and copies shall be transmitted to the appropriate committees of Congress.

Dated: August 7, 2009.

William J. Burns,

Under Secretary for Political Affairs, Department of State.

[FR Doc. E9–20147 Filed 8–20–09; 8:45 am]

BILLING CODE 4710–17–P

DEPARTMENT OF STATE

[PUBLIC NOTICE 6734]

Culturally Significant Objects Imported for Exhibition Determinations: ''Vermeer's Masterpiece: The Milkmaid''

ACTION: Notice; Correction.

SUMMARY: On June 19, 2009, notice was published on page 29262 of the **Federal Register** (volume 74, number 117) of determinations made by the Department of State pertaining to the exhibit ''Vermeer's Masterpiece: The Milkmaid.'' The referenced notice is corrected as to additional objects to be included in the exhibition. Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Vermeer's Masterpiece: The Milkmaid,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY, from on or about September 9, 2009, until on or about November 29, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202/632–6473). The address is U.S. Department of State, SA–5, L/PD, Washington, DC 20522–0505.

Dated: August 11, 2009.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E9–20146 Filed 8–20–09; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Trade Advisory Committee on Small and Minority Business (ITAC–11)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a Partially Opened Meeting.

SUMMARY: The Industry Trade Advisory Committee on Small and Minority Business (ITAC–11) will hold a meeting on Monday, September 14, 2009, from 9 a.m. to 3:30 p.m. The meeting will be closed to the public from 9 a.m. to 12 p.m., and opened to the public from 12 p.m. to 3:30 p.m.

DATES: The meeting is scheduled for September 14, 2009, unless otherwise notified.

ADDRESSES: The meeting will be held at the Ronald Reagan International Trade Center, Training Room A, 14th Street and Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Laura Hellstern, DFO for ITAC–11 at (202) 482–3222, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the following agenda items will be considered.

- Congressional SME Initiative.
- Foreign Direct Investment.
- World Bank Opportunities for Small and Minority Business.
- Trade Promotion Coordinating Committee Updates—ITA, SBA, OPIC, Exim Bank.
- Export Controls.

Lisa A. Garcia,

Acting Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. E9–20118 Filed 8–20–09; 8:45 am]

BILLING CODE 3190–W9–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2009–0115]

Agency Information Collection Activities: Renewed Approval of Information Collection

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves the Supplemental Discretionary Grants for a National Surface Transportation System, or TIGER Discretionary Grants. The information to be collected will be used to and/or is necessary in order to receive and evaluate applications for grant funds pursuant to Title XII of the American Recovery and Reinvestment Act of 2009 (ARRA). Title XII established a new program for OST to provide Supplemental Discretionary Grants for a National Surface Transportation System. OST is referring to these grants as Grants for Transportation Investment Generating Economic Recovery, or ''TIGER Discretionary Grants.'' The purposes of

the TIGER Discretionary Grants program include promoting economic recovery and supporting projects that have a significant impact on the Nation, a metropolitan area or a region.

DATES: Written comments should be submitted by October 20, 2009.

ADDRESSES: You may submit comments [identified by Docket No. DOT–OST–2009–0115] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jack Bennett, Office of the Assistant Secretary for Transportation Policy, at 202–366–6222 or *Jack.Bennett@dot.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0560.

Title: Supplemental Discretionary Grants for a National Surface Transportation System or TIGER Discretionary Grants.

Form Numbers: None.

Type of Review: Renewal of an information collection.

Background: On February 17, 2009, the President of the United States signed the Recovery Act to, among other purposes, (1) preserve and create jobs and promote economic recovery, (2) invest in transportation infrastructure that will provide long-term economic benefits, and (3) assist those most affected by the current economic downturn. The Recovery Act appropriated $1.5 billion of discretionary grant funds to be awarded by the Department for capital investments in surface transportation infrastructure. The funds provided by TIGER Grants will be awarded on a competitive basis to projects that have a significant impact on the Nation, a metropolitan area, or a region.

On May 18, 2009, the Department published an interim notice announcing the availability of funding for TIGER Discretionary Grants, project selection criteria, application requirements and the deadline for submitting applications, which is September 15, 2009. On June 17, 2009, the Department published an additional notice revising some elements of the interim notice. In the event that the June 17, 2009, solicitation does not result in the award and obligation of all available funds, the Department may decide to publish an additional solicitation.

The Department's estimated burden for this information collection is the following:

Expected Number of Respondents: 500.

Frequency: One time collection.

Estimated Average Burden per Response: 100 hour.

Estimated Total Annual Burden: 50,000.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for OST's performance; (b) the accuracy of the estimated burden; (c) ways for OST to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC on August 17, 2009.

Patricia Lawton,

DOT Paperwork Reduction Act Clearance Officer, Office of the Chief Information Officer.

[FR Doc. E9–20080 Filed 8–20–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2009–0092]

Information Collection Activity: Request for Comments

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and requests for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for an extension of a currently approved collection. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on June 12, 2009, [FR Vol. 74, No.112, page 28090]. No comments were received.

DATES: Comments on this notice must be received by September 21, 2009: DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Deborah Perkins, Departmental Office of Human Resources, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–9447.

SUPPLEMENTARY INFORMATION:

Title: Applicant Background Questionnaire.

OMB Control Number: 2105–0557.

OST Form Number: OST F 3300.18.

Abstract: The purpose of the collection is to standardize the collection of race, ethnicity, sex, national origin, and disability status from applicants for positions within all DOT Operating Administrations. This information will assist the DOT in monitoring programs and will be the basis for several different reports required by statute.

Affected Public: Employees upon initial hire and applicants for positions.

Estimated Number of Respondents: 93,000.

Estimated Number of Responses: 93,000.

Annual Estimated Burden Hours: 4650 hours.

Frequency of Collection: Once.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility as described; (b) the accuracy of the Department's estimate of burden of the proposed collection of information, including the validity of methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate, automated, electronic, mechanical or other technology. Comments should be addressed to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

Issued in Washington, DC on August 12, 2009.

Patricia Lawton,

DOT Paperwork Reduction Act Clearance Officer, Office of Chief Information Officer.

[FR Doc. E9–20131 Filed 8–20–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2007–28532]

Port Dolphin Energy LLC, Port Dolphin Energy Liquefied Natural Gas Deepwater Port License Application; Final Environmental Impact Statement

AGENCY: Maritime Administration, DOT.

ACTION: Notice of availability; Correction.

SUMMARY: The Coast Guard and the Maritime Administration (MARAD) announce the availability of material supplementing the Final Environmental Impact Statement (FEIS) for the Port Dolphin Energy Liquefied Natural Gas Deepwater Port license application. The supplementary material corrects errors in the FEIS.

DATES: To allow sufficient time for public review and comment on this supplemental material we are extending the public comment period until September 11, 2009. All other scheduled dates remain unchanged. The Federal and State Agency and Governor comment periods also end September 11, 2009 and the MARAD Record of Decision is due by October 26, 2009.

FOR FURTHER INFORMATION CONTACT: Ray Martin, U.S. Coast Guard, telephone: 202–372–1449, e-mail: *raymond.w.martin@uscg.mil* or Chris Hanan, U.S. Maritime Administration, telephone: 202–366–1900, e-mail: *Christopher.Hanan@dot.gov.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

(Authority 49 CFR 1.66)

SUPPLEMENTARY INFORMATION:

On July 13, 2009, the Coast Guard and MARAD notice of availability for the Port Dolphin Energy Liquefied Natural Gas Deepwater Port license application FEIS appeared in the Federal Register (74 FR 33509). Subsequently, we discovered several typographical errors and errors related to the analysis of sand resources in the Executive Summary and Sections 3, 4, and 6 of the FEIS. The most significant of these errors was a mathematical unit conversion error that resulted in the volumes of sand reported in the FEIS being nine times the actual estimated values.

The corrections to the FEIS appear in this notice which, along with the FEIS itself, is available for viewing at the Federal Docket Management System Web site: *http://www.regulations.gov* under docket number USCG–2007–28532. You may also view these materials in person at Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility telephone number is 202–366–9329.

The following corrections to the FEIS apply:

Page ES–7, Table ES–1

Delete: Table ES–1
Replace with: the following table:

TABLE ES–1—COMPARISON OF LOCATION AND PIPELINE ALTERNATIVES FOR PORT DOLPHIN

Project component	Proposed site and pipeline alternative	Southern site and pipeline alternative	Offshore interconnection with gulfstream pipeline
Port Components			
.			
Port C/O footprint	22 acres	30 acres (+36%)	22 acres
Pipeline Components			
Total pipeline length	74.0 km (46 mi)	80.4 km (50 mi) (+9%)	28.8 km (18 mi) (−38%)
Offshore length (from the piggable Y to the bulkhead).	67.6 km (42 mi)	74 km (46 mi) (+9.5%)	N/A
Offshore pipeline construction footprint (3,000-foot construction survey corridor).	16,728 acres	18,180 acres (+ 9%)	6,545 acres (−39%)
Offshore Gulfstream Pipeline crossing.	Crosses two times. HDD 1=1,335 feet, HDD 2=2,947 feet.	N/A	N/A
Permitted Sand Borrow Area IX	0 cubic yards	248,581 cubic yards	0 cubic yards
ROSS Areas	5,374,463 cubic yards	7,069,055 cubic yards	0 cubic yards
Offshore shipping channel crossings.	none	None	none
Nearshore Terra Ceia crossing	none	Crosses two times: 4.8 km (3.0 mi), and 1.1 km (0.7 mi).	none
Onshore pipeline length	6.4 km (4 mi)	6.4 km (4 mi)	6.4 km (4 mi)
Onshore pipeline C footprint (100-foot ROW).	48.5 acres	48.5 acres	48.5 acres
Onshore O footprint (30-foot ROW)	14.5 acres	14.5 acres	14.5 acres
Onshore wetland crossings C impacts.	10.71 acres	10.71 acres	10.71 acres
Onshore wetland crossings O impacts.	1.19 acres	1.19 acres	1.19 acres
Onshore Facility and Workspace Components			
Onshore landfall location	Just east of Gulfstream station at Port Manatee.	Just east of Gulfstream station at Port Manatee.	N/A

TABLE ES–1—COMPARISON OF LOCATION AND PIPELINE ALTERNATIVES FOR PORT DOLPHIN—Continued

Project component	Proposed site and pipeline alternative	Southern site and pipeline alternative	Offshore interconnection with gulfstream pipeline
Aboveground facilities	Interconnection with GS and TECO—120 × 1,319 feet (3.4 acres). Valve station located on Port Manatee property—50 × 60 feet (0.07 acres).	Interconnection with GS and TECO—120 × 1,319 feet (3.4 acres) Valve station located on Port Manatee property—50 × 60 feet (0.07 acres).	Interconnection with GS offshore
Onshore extra work spaces (located at the entrance and exit areas for HDD and boring activities).	6 acres	6 acres	6 acres
Staging areas, pipeyard, and contractor facilities would be located on Port Manatee (6 months).	34 acres; includes a concrete batch plant, mattress facility and pipe lay-down areas.	34 acres; includes a concrete batch plant, mattress facility, and pipe lay-down areas.	34 acres; includes a concrete batch plant, mattress facility, and pipe lay-down areas
Onshore access roads	None (use existing roadways)	None (use existing roadways)	N/A

NOTES:
C—Construction; O—Operation
Length and acreage have been rounded to nearest whole number for NEPA planning purposes

Page 3–77, Geological Resources

Delete: The survey information provided by the Town of Longboat Key identified approximately 25 additional areas with potential as future sand borrow areas. These areas have not been fully investigated, and therefore cannot be confirmed to contain beach quality sand resources. These areas include a total of approximately 125,000 acres.

Replace with: The survey information provided by the Town of Longboat Key identified approximately 25 additional areas with potential as future sand borrow areas. These areas have not been fully investigated, and therefore cannot be confirmed to contain beach quality sand resources. These areas include a total of approximately 128,000 acres.

Page 4–157, Geological Resources

Delete: The Proposed Pipeline Route passes through potential areas identified by Longboat Key, including the area identified in Federal waters as F–2, in their May 28, 2008, comments for a distance of 3.9 km (2.4 mi), and through the ROSS area for a distance of approximately 25.3 km (15.7 mi). These lengths were used to calculate the volumes in Table 4.4–1.

Replace with: The Proposed Pipeline Route passes through potential areas identified by Longboat Key, including the area identified in Federal waters as F–2, in their May 29, 2008 and May 28, 2009 comments. Based on GIS mapping calculations, the Proposed pipeline would pass through potential areas identified by Longboat Key for a distance of 3.9 km (2.4 mi), and through the ROSS area for a distance of approximately 11.5 km (7.2 mi). These lengths were used to calculate the volumes in Table 4.4–1.

Delete: Table 4.4–1

Replace with: the following table:

TABLE 4.4–1—IMPACTS ON POTENTIAL SAND BORROW AREAS

	Size of area (acres)	Volume of area (cubic yards)		Length of pipeline through impacted area (feet)	Volume of impacted area (cubic yards)		Percentage of potential volume impacted
		3.75-foot average depth	9.5-foot average depth		3.75-foot average depth	9.5-foot average depth	
Borrow Area IX	264	1,597,200	4,046,240	0	0	0	0.00
High-Volume Sand Shoal	4,500	27,225,000	68,970,000	0	0	0	0.00
Longboat Key Potential Areas	128,000	774,400,000	1,961,813,333	12,858	714,323	1,809,617	0.09
ROSS Area	538,000	3,254,900,000	8,245,746,667	38,187	2,121,499	5,374,463	0.07

Delete: In 2006, Longboat Key used approximately 1,360,000 m^3 (1,790,000 y^3) of sand resources for their beach renourishment project. Assuming Longboat Key's next major beach renourishment project requires a similar amount of sand the proposed pipeline route would result in a loss of beach quality sand from the Longboat Key-identified potential sand resource areas equivalent to 2 to 5.5 beach renourishment projects. The loss of sand resulting from the proposed pipeline obstruction on ROSS-identified resources would result in the loss of 10.6 to 27.0 beach renourishment projects. No loss of beach quality sand within Borrow Area IX or the High Volume Sand Shoal is anticipated to occur.

Replace with: In 2006, Longboat Key used approximately 1,360,000 m^3 (1,790,000 y^3) of sand resources for their beach renourishment project. Assuming Longboat Key's next major beach renourishment project requires a similar amount of sand, the proposed pipeline route would result in a loss of sand from the Longboat Key-identified potential sand resource areas equivalent to 0.4 to 1 beach renourishment projects. The loss of sand resulting from the proposed pipeline obstruction on ROSS-identified resources would result in the loss of 1.2 to 3 beach renourishment projects. No loss of beach-quality sand within Borrow Area IX or the High-Volume Sand Shoal is anticipated to occur.

Page 4–160, Geological Resources

Delete: Table 4.4–2

Replace with: the following table:

TABLE 4.4–2—IMPACTS ON POTENTIAL SAND BORROW AREAS ALONG THE SOUTHERN SITE AND ROUTE ALTERNATIVE

	Size of area (acres)	Volume of area (cubic yards)		Length of pipeline through impacted area (feet)	Volume of impacted area (cubic yards)		Percentage of potential volume impacted
		3.75-foot average depth	9.5-foot average depth		3.75-foot average depth	9.5-foot average depth	
Borrow Area IX	264	1,597,200	4,046,240	1,766	98,124	248,581	6.14
High-Volume Sand Shoal	4,500	27,225,000	68,970,000	12,302	683,448	1,731,402	2.51
Longboat Key Potential Areas	128,000	774,400,000	1,961,813,333	24,046	1,335,889	3,384,251	0.17
ROSS Area	538,000	3,254,900,000	8,245,746,667	50,227	2,790,416	7,069,055	0.09

Page 4–161, Geological Resources

Delete: Assuming Longboat Key's next major beach renourishment project requires a similar amount of sand the southern pipeline route would result in a loss of beach quality sand from Borrow Area IX equivalent to 0.5 to 1.2 renourishment projects. The loss of beach quality sand resulting from the proposed pipeline obstruction on ROSS-identified resources would result in sand loss equivalent to 14.0 to 35.5 beach renourishment projects.

Replace with: Assuming Longboat Key's next major beach renourishment project requires a similar amount of sand, the southern pipeline route would result in a loss of beach-quality sand from Borrow Area IX equivalent to 0.05 to 0.14 beach renourishment projects. The loss of sand resulting from the proposed pipeline obstruction on ROSS-identified resources would result in sand loss equivalent to 1.6 to 3.9 beach renourishment projects.

Page 4–170, Marine Areas and Land Use

Delete: The total construction footprint for this alternative is estimated to be 9,323 acres, or 9 percent less than the proposed alternative. For impacts on sand resource areas, assuming a 400-m (1,312-foot) buffer centered on the pipeline, a total of 103 acres of the available area would be restricted for use in beach renourishment.

Replace with: The total construction footprint for this alternative is estimated to be 9,323 acres, or 9 percent more than the proposed alternative. For impacts on sand resource areas see Table 4.4–2.

Page 4–215, Socioeconomic Resources and Environmental Justice

Delete: The sand resource locations and quantities of sand that would be inaccessible after construction of the pipeline are minimal and alternative resources exist nearby (*see* Section 4.1.1).

Replace with: The sand resource locations and quantities of sand that would be inaccessible after construction of the pipeline are minimal and alternative resources exist nearby (see Figure 2.1–18).

Page 4–243, BMPs, Mitigation and Minimization Measures, and Monitoring

Delete: The Maritime Administration agrees that mitigation and monitoring of egg and fish mortality should be required to demonstrate impacts consistent with those analyzed in the EIS. Further details of this effort, including the duration of monitoring, would be developed in coordination with NOAA and USEPA as part of a detailed monitoring and mitigation plan being developed by the Maritime Administration. Onsite sampling for ichthyoplankton, lobster, and shrimp densities should include three years of data prior to the start of operations. If a license is issued, Port Dolphin Energy LLC would be required to conduct site-specific, year-round surveying to collect data on existing fish and invertebrate ichthyoplankton populations. Data collection shall begin as soon as the license is issued, and continue for a minimum of 3 years. Furthermore, one year of data collection must be completed prior to the start of operations, one of which must be completed prior to the start of operations.

Replace with: The Maritime Administration agrees that mitigation and monitoring of egg and fish mortality should be required to demonstrate impacts consistent with those analyzed in the EIS. Further details of this effort would be developed in coordination with NOAA and USEPA as part of a detailed monitoring and mitigation plan being developed by the Maritime Administration. If a license is issued, Port Dolphin Energy LLC would be required to conduct site-specific, year-round surveying to collect data on existing fish and invertebrate ichthyoplankton populations. Data collection shall begin as soon as the license is issued, and continue for a minimum of three years. Furthermore, one year of data collection must be completed prior to the start of operations.

Page 6–31, Geological Resources

Delete: The proposed pipeline would pass through two potential sand sources identified by the Town of Longboat Key

for a distance of approximately 2.26 km (1.4 mi). In addition, the proposed pipeline would pass through approximately 11.64 km (7.23 mi) of ROSS-identified potential sand source area. Based on analysis conducted in Sections 3.4.3 and 4.4.1, the proposed pipeline route including the 200-foot buffer on each side of the pipeline would restrict approximately 383 acres (155 hectares) for use in beach nourishment. This area comprises 0.06 percent of the 615,464 acres of the Long Boat Key, ROSS, High Volume Sand Shoal, and Borrow Area IX mapped potential sand resource areas.

Replace with: The Proposed Pipeline Route passes through potential areas identified by Longboat Key, including the area identified in Federal waters as F–2, in their May 29, 2008 and May 28, 2009 comments. Based on GIS mapping calculations, the Proposed pipeline would pass through potential areas identified by Longboat Key for a distance of 3.9 km (2.4 mi), and through the ROSS area for a distance of approximately 11.5 km (7.2 mi). These lengths were used to calculate the volumes in Table 4.4–1.

Dated: August 18, 2009.

By Order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E9–20145 Filed 8–20–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Seattle-Tacoma International Airport, Seattle, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property, correction.

SUMMARY: On August 12, 2009, the FAA published in the **Federal Register** a notice of intent to rule on a request to release airport property at the Seattle-Tacoma International Airport, Seattle, WA.

The **DATES** section designating the public comment period is incorrect. The correction to be made will provide a full 30-day public comment period, currently identified in FR Doc. No. E9–19055, on page 40639, as August 6, 2009.

DATES: Comments must be received on or before September 21, 2009.

Issued in Renton, Washington on August 12, 2009.

Carol Suomi,

Manager, Seattle Airports District Office, Northwest Mountain Region.

[FR Doc. E9–20123 Filed 8–20–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held September 9, 2009 starting at 8:30 a.m. to 1:30 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 850, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a NextGen Mid-Term Implementation Task Force meeting. The agenda will include:

- Opening Plenary (Welcome and Introductions).
- Review/Approve Summary of July 1, 2009 PMC meeting, RTCA Paper No. 163–09/PMC–738.
- Publication Consideration/ Approval.
- Final Draft, New Document, Safety, Performance and Interoperability Requirements Document for Enhanced Air Traffic Services in Radar-Controlled Areas using ADS–B Surveillance (ADS–B–RAD), RTCA Paper No. 170–09/PMC–743, prepared by SC–186.
- Integration and Coordination Committee (ICC)—Report.
- Action Item Review.
- SC–218—Future ADS–B/TCAS Relationships—Discussion—Status.
- SC–203—Unmanned Aircraft Systems (UAS)—Discussion—Status.
- Discussion.
- SC–214—Standards for Air Traffic Data Communications Services—Discussion—DO–258A, Interoperability Requirements for ATS Applications Using ARINC 622 Data Communications.
- Special Committee Chairman's Reports.
- Other Business.
- Closing Plenary (Other Business, Document Production, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 13, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–20125 Filed 8–20–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 670 (Sub-No. 1)]

Notice of Rail Energy Transportation Advisory Committee Meeting

AGENCY: Surface Transportation Board.

ACTION: Notice of Rail Energy Transportation Advisory Committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Rail Energy Transportation Advisory Committee (RETAC), pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2).

DATES: The meeting will be held on Thursday, September 10, 2009, beginning at 9 a.m., E.D.T.

ADDRESSES: The meeting will be held in the Hearing Room on the first floor of the Surface Transportation Board's headquarters at Patriot's Plaza, 395 E Street, SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Scott M. Zimmerman (202) 245–0202. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339].

SUPPLEMENTARY INFORMATION: RETAC arose from a proceeding instituted by the Board, in *Establishment of a Rail Energy Transportation Advisory Committee,* STB Ex Parte No. 670. RETAC was formed to provide advice and guidance to the Board, and to serve as a forum for discussion of emerging issues regarding the transportation by rail of energy resources, particularly, but not necessarily limited to, coal, ethanol, and other biofuels. The purpose of this meeting is to continue discussions regarding issues such as rail performance, capacity constraints, infrastructure planning and development, and effective coordination among suppliers, carriers, and users of energy resources. Potential agenda items include reports from each of the four RETAC subcommittees (Best Practices, Capacity Planning, Communication, and Performance Measures), a discussion of coal dust mitigation, and election of RETAC officers for 2-year terms.

The meeting, which is open to the public, will be conducted pursuant to RETAC's charter and Board procedures. Further communications about this meeting may be announced through the Board's Web site at *http://www.stb.dot.gov.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 721, 49 U.S.C. 11101; 49 U.S.C. 11121.

Decided: August 18, 2009.

By the Board, Anne K. Quinlan, Acting Secretary.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–20173 Filed 8–20–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Meeting With Interested Persons To Discuss the Proposed Federal Aviation Administration Policy (Draft AC 21.101A) Establishing the Certification Basis for Changed Aeronautical Products

AGENCY: Federal Aviation Administration (DOT)

ACTION: Notice of public meetings.

SUMMARY: The Federal Aviation Administration (FAA), along with Transport Canada Civil Aviation (TCCA), and the European Aviation Safety Agency (EASA), will hold two informational meetings to discuss the interpretations, applications, and harmonization of the Title 14 of the Code of Federal Regulations (14 CFR) § 21.101, derived advisory circular (AC) 21.101, Establishing the Certification Basis of Changed Aeronautical Products (a.k.a. Change Product Rule (CPR)).

Beginning in October 2007, the FAA, TCCA, and EASA chartered an International Implementation Team (IIT) to revise the current CPR AC 21.101, by incorporating the lessons learned since the rule's inception, by improving and clarifying the guidance in Revision ''A'' of the CPR AC.

Meeting Dates and Locations:

Europe (EASA): September 23, 2009 in Cologne, Germany.

North America (FAA, TCCA): October 7, 2009 in Washington, DC.

The North American meeting is intended to include interested persons for both the United States of America and Canada.

If you plan to attend either or both of the meetings, please forward your preferred location(s) via the following e-mail address: *AWA-AVS-CPR-IIT–Outreach@faa.gov* before August 31, 2009. Specific information pertaining to the meeting locations and times will be forwarded to those who respond to the above email address as it develops.

DATES: These meetings will be held on September 23, 2009, in Cologne, Germany, and on October 7, 2009, in Washington, DC.

ADDRESSES: The addresses for the specific meetings will be provided to those individuals planning to attend at a later date.

FOR FURTHER INFORMATION CONTACT: To obtain additional details on the two meetings, please contact the following:

Federal Aviation Administration (FAA): Mr. Randall Petersen, AIR–110, Federal Aviation Administration, Certification Procedure Branch, AIR–110, 950 L'Enfant Plaza, SW., Fifth floor, Washington, DC 20024, Telephone (202) 385–6325, *Fax:* (202) 385–6475, *E-mail: randall.petersen@faa.gov.*

European Aviation Safety Agency (EASA): Mr. Jan Novák, Rulemaking Directorate, Initial Airworthiness Rulemaking Officer, European Aviation Safety Agency, Postfach 10 12 53, D–50452 Köln Germany *Telephone:* +49 221 89990 5015, *Fax:* +49 221 89990 5515, *E-mail: jan.novak@easa.europa.eu.*

Transport Canada Civil Aviation (TCCA): Mr. Eric Lucas, Standards Branch, AARTC, Transport Canada Civil Aviation, 330 Sparks Street, 2nd Floor, Ottawa, Ontario, Canada K1A 0N8, Telephone (613) 949–8515, *Fax:* (613) 952–3298, *E-mail: eric.lucas@tc.gc.ca.*

Issued in Washington, DC, on August 18, 2009.

Susan J. M Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. E9–20126 Filed 8–20–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–36]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before September 10, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0648 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ralen Gao, Office of Rulemaking, ARM–209, Federal Aviation Administration, 800 Independent Avenue, SW., Room 810, Washington, DC 20591, fax 202–267–5075, telephone 202–267–3168. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on August 17, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2009–0648.

Petitioner: Air Transport Association.

Section of 14 CFR Affected: 14 CFR 121.1105(e).

Description of Relief Sought: Petitioner seeks relief from the 60-day notification requirement in § 121.1105(e) when an air carrier uses a designated airworthiness representative to accomplish the required aircraft records review and inspections.

[FR Doc. E9–20058 Filed 8–20–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35271]

Grand Trunk Western Railroad Company—Trackage Rights Exemption—Illinois Central Railroad Company

Pursuant to a written trackage rights agreement dated July 13, 2009, Illinois Central Railroad Company (IC) has agreed to grant Grand Trunk Western Railroad Company (GTW) non-exclusive trackage rights over 4.8 miles of IC's Freeport Subdivision between milepost 3.5 at Chicago, IL (Bridgeport) and IC's connection with The Belt Railway Company of Chicago and Chicago, Central & Pacific Railroad Company at or near milepost 8.3 at Chicago (Belt Crossing).[1]

The transaction is scheduled to be consummated on September 3, 2009, the effective date of the exemption (30 days after the exemption is filed). The purpose of the trackage rights is to enable GTW to efficiently handle freight movements between Bridgeport and Chicago (Belt Crossing), on IC's Freeport Subdivision. The transaction also extends to all industry spurs, connecting tracks and sidings now existent or hereafter constructed along the tracks to be used here, and right-of-way for the tracks to be used here, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of those tracks.

This is one of 17 notices of exemption for trackage rights in the Chicago area submitted simultaneously by carrier subsidiaries of the Canadian National Railway Company (CN). We note that the involved lines of railroad were examined as part of the project area in *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company,* Finance Docket No. 35087 (STB served Dec. 24, 2008) (*CN—EJ&E*). Neither CN nor any of the carriers submitting these notices has explained how the notices relate to each other, or how they would impact the operational information provided to the Board in *CN—EJ&E.* CN and its carrier subsidiaries are directed to submit this information, as well as a color-coded map showing all 17 proposed trackage rights exemptions, by August 21, 2009.

As a condition to this exemption, any employee affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by August 27, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, section 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35271, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, 17641 S. Ashland Avenue, Homewood, IL 60430.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

It is ordered:

The carriers filing this notice and CN are hereby directed to file by August 21, 2009: (1) An explanation of how this notice relates to the 16 other notices filed simultaneously by carrier subsidiaries of CN, (2) an explanation of how these notices would impact the operational information provided to the Board in *CN—EJ&E*, and (3) a color-coded map.

Decided: August 17, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–20114 Filed 8–20–09; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted version of the trackage rights agreement between IC and GTW was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35280]

Wisconsin Central Ltd.—Trackage Rights Exemption—Grand Trunk Western Railroad Company

Pursuant to a written trackage rights agreement dated July 13, 2009, Grand Trunk Western Railroad Company (GTW) has agreed to grant nonexclusive trackage rights to Wisconsin Central Ltd. (WCL) over 12.9 miles of GTW's Elsdon Subdivision between GTW's connection with Illinois Central Railroad Company at or near milepost 23.2 (CN Junction) at Harvey, IL and the east side of the interlocking plant for GTW's connection with Elgin, Joliet & Eastern Railway Company at or near milepost 36.1 (Griffith), at Griffith, IN.[1]

The transaction is scheduled to be consummated on or about September 3, 2009, the effective date of the exemption (30 days after the exemption is filed). The purpose of the trackage rights is to enable GTW to efficiently handle freight movements between CN Jct. and Griffith on GTW's Elsdon Subdivision. The transaction also extends to all industry spurs, connecting tracks and sidings now existent or hereafter constructed along the tracks to be used here, and right-of-way for the tracks to be used here, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of those tracks.

This is one of 17 notices of exemption for trackage rights in the Chicago area submitted simultaneously by carrier subsidiaries of the Canadian National Railway Company (CN). We note that the involved lines of railroad were examined as part of the project area in *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company,* Finance Docket No. 35087 (STB served Dec. 24, 2008) (*CN—EJ&E*). Neither CN nor any of the carriers submitting these notices has explained how the notices relate to each other, or how they would impact the operational information provided to the Board in *CN—EJ&E.* CN and its carrier subsidiaries are directed to submit this information, as well as a color-coded map showing all 17

[1] A redacted version of the trackage rights agreement between GTW and WCL was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

proposed trackage rights exemptions, by August 21, 2009.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by August 27, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35280, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, 17641 S. Ashland Ave., Homewood, IL 60430.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

It is ordered:

The carriers filing this notice and CN are hereby directed to file by August 21, 2009: (1) An explanation of how this notice relates to the 16 other notices filed simultaneously by carrier subsidiaries of CN, (2) an explanation of how these notices would impact the operational information provided to the Board in *CN—EJ&E* and (3) a color-coded map.

Decided: August 17, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–20088 Filed 8–20–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35275]

Chicago Central & Pacific Railroad Company—Trackage Rights Exemption—Illinois Central Railroad Company

Pursuant to a written trackage rights agreement dated July 13, 2009, Illinois Central Railroad Company (IC) has agreed to grant Chicago Central & Pacific Railroad Company (CCP) nonexclusive trackage rights over IC's line of railroad between milepost 8.3 (Belt Crossing) at Chicago, IL, and milepost 2.1 at 16th Street in Chicago, on IC's Freeport Subdivision, and between milepost 1.5 at 16th Street in Chicago and milepost 31.6 (Stuenkel Road) at University Park, IL, on IC's Chicago Subdivision, a distance of approximately 36.3 miles, all in the State of Illinois.[1]

The transaction is scheduled to be consummated on or about September 3, 2009, the effective date of the exemption (30 days after the exemption is filed). The purpose of the trackage rights is to enable CCP to efficiently handle freight movements between Belt Crossing, Chicago, and University Park. The transaction also extends to all industry spurs, connecting tracks and sidings now existent or hereafter constructed along the tracks to be used here, and right-of-way for the tracks to be used here, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of those tracks.

This is one of 17 notices of exemption for trackage rights in the Chicago area submitted simultaneously by carrier subsidiaries of the Canadian National Railway Company (CN). We note that the involved lines of railroad were examined as part of the project area in *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company,* Finance Docket No. 35087 (STB served Dec. 24, 2008) (*CN—EJ&E*). Neither CN nor any of the carriers submitting these notices has explained how the notices relate to each other, or how they would impact the operational information provided to the Board in *CN—EJ&E*. CN and its carrier subsidiaries are directed to submit this information, as well as a color-coded map showing all 17 proposed trackage rights exemptions, by August 21, 2009.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by August 27, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35275, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, 17641 S. Ashland Avenue, Homewood, IL 60430.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

It is ordered:

The carriers filing this notice and CN are hereby directed to file by August 21, 2009: (1) An explanation of how this notice relates to the 16 other notices filed simultaneously by carrier subsidiaries of CN, (2) an explanation of how these notices would impact the operational information provided to the Board in *CN—EJ&E* and (3) a color-coded map.

Decided: August 17, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–20087 Filed 8–20–09; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted version of the trackage rights agreement between IC and CCP was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35279]

Wisconsin Central Ltd.—Trackage Rights Exemption—Illinois Central Railroad Company

Pursuant to a written trackage rights agreement dated July 13, 2009, Illinois Central Railroad Company (IC) has agreed to grant Wisconsin Central Ltd. (WCL) non-exclusive trackage rights over 23.6 miles of IC's Joliet Subdivision between IC's connection with Indiana Harbor Belt Railroad Company at or near milepost 13.1 (CP Canal), at Argo, IL, and IC's connection with Union Pacific Railroad Company at or near milepost 36.7 (Jackson Street), at Joliet, IL.[1]

WCL proposes to consummate the transaction on or about September 3, 2009, but the earliest it may be consummated is September 4, 2009, the effective date of the exemption (30 days after the exemption was filed). The purpose of the trackage rights is to enable WCL to efficiently handle freight movements between Argo and Joliet, over IC's Joliet Subdivision. The transaction also extends to all industry spurs, connecting tracks and sidings now existent or hereafter constructed along the tracks to be used here, and right-of-way for the tracks to be used here, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of those tracks.

This is one of 17 notices of exemption for trackage rights in the Chicago area submitted simultaneously by carrier subsidiaries of the Canadian National Railway Company (CN). We note that the involved lines of railroad were examined as part of the project area in *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company,* Finance Docket No. 35087 (STB served Dec. 24, 2008) (*CN—EJ&E*). Neither CN nor any of the carriers submitting these notices has explained how the notices relate to each other, or how they would impact the information provided to the Board in *CN—EJ&E*. CN and its carrier subsidiaries are directed to submit this information, as well as a color-coded map showing all 17 proposed trackage rights exemptions, by August 21, 2009.

As a condition to this exemption, any employee affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by August 28, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35279, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, 17641 S. Ashland Avenue, Homewood, IL 60430.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

It is ordered:

The carriers filing this notice and CN are hereby directed to file by August 21, 2009: (1) An explanation of how this notice relates to the 16 other notices filed simultaneously by carrier subsidiaries of CN, (2) an explanation of how these notices would impact the operational information provided to the Board in *CN—EJ&E*, and (3) a color-coded map.

Decided: August 17, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–20086 Filed 8–20–09; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted version of the trackage rights agreement between IC and WCL was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35277]

Chicago Central & Pacific Railroad Company—Trackage Rights Exemption—Wisconsin Central, Ltd.

Pursuant to a written trackage rights agreement dated July 13, 2009, Wisconsin Central, Ltd. (WCL) has agreed to grant nonexclusive trackage rights to Chicago Central & Pacific Railroad Company (CCP) over WCL's line of railroad extending between the connection with Elgin, Joliet & Eastern Railway Company trackage at or near milepost 37.9 at Leithton, IL, and the connection with CSX Transportation, Inc. trackage at or near milepost 10.9 at Forest Park, IL (Madison Street), on WCL's Waukesha Subdivision, a distance of approximately 27.0.miles, all in the State of Illinois.[1]

The transaction is scheduled to be consummated on or about September 3, 2009, the effective date of the exemption (30 days after the exemption is filed). The purpose of the trackage rights is to enable CCP to efficiently handle freight movements between Leithton and Forest Park. The transaction also extends to all industry spurs, connecting tracks and sidings now existent or hereafter constructed along the tracks to be used here, and right-of-way for the tracks to be used here, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of those tracks.

This is one of 17 notices of exemption for trackage rights in the Chicago area submitted simultaneously by carrier subsidiaries of the Canadian National Railway Company (CN). We note that the involved lines of railroad were examined as part of the project area in *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company,* Finance Docket No. 35087 (STB served Dec. 24, 2008) (*CN—EJ&E*). Neither CN nor any of the carriers submitting these notices has explained how the notices relate to each other, or how they would impact the information provided to the Board in *CN—EJ&E*. CN and its carrier subsidiaries are directed to submit this information, as well as a color-coded map showing all 17 proposed

[1] A redacted version of the trackage rights agreement between WCL and CCP was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

trackage rights exemptions, by August 21, 2009.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by August 27, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35277, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, 17641 S. Ashland Ave., Homewood, IL 60430.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

It is ordered:

The carriers filing this notice and CN are hereby directed to file by August 21, 2009: (1) An explanation of how this notice relates to the 16 other notices filed simultaneously by carrier subsidiaries of CN, (2) an explanation of how these notices would impact the operational information provided to the Board in *CN—EJ&E*, and (3) a color-coded map.

Decided: August 17, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–20085 Filed 8–20–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35267]

Illinois Central Railroad Company—Trackage Rights Exemption—Chicago Central & Pacific Railroad Company

Pursuant to a written trackage rights agreement dated July 13, 2009, Chicago Central & Pacific Railroad Company (CCP) has agreed to grant Illinois Central Railroad Company (IC) nonexclusive trackage rights over CCP's line of railroad between CCP's connection with the Elgin, Joliet & Eastern Railway Company at or near CCP's milepost 35.7 at Munger, IL, and CCP's connection with IC at or near CCP's milepost 8.3 (Belt Crossing) at Chicago, IL, on CCP's Freeport Subdivision, a distance of approximately 27.4 miles, all in the State of Illinois.[1]

The transaction is scheduled to be consummated on or about September 3, 2009, the effective date of the exemption (30 days after the exemption is filed). The purpose of the trackage rights is to enable IC to efficiently handle freight movements between Munger and Belt Crossing at Chicago. The transaction also extends to all industry spurs, connecting tracks and sidings now existent or hereafter constructed along the tracks to be used here, and right-of-way for the tracks to be used here, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of those tracks.

This is one of 17 notices of exemption for trackage rights in the Chicago area submitted simultaneously by carrier subsidiaries of the Canadian National Railway Company (CN). We note that the involved lines of railroad were examined as part of the project area in *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company*, Finance Docket No. 35087 (STB served Dec. 24, 2008) (*CN—EJ&E*). Neither CN nor any of the carriers submitting these notices has explained how the notices relate to each other, or how they would impact the operational information provided to the Board in *CN—EJ&E*. CN and its carrier subsidiaries are directed to submit this information, as well as a color-coded map showing all 17 proposed trackage rights exemptions, by August 21, 2009.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by August 27, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35267, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, 17641 S. Ashland Avenue, Homewood, IL 60430.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

It is ordered:

The carriers filing this notice and CN are hereby directed to file by August 21, 2009: (1) An explanation of how this notice relates to the 16 other notices filed simultaneously by carrier subsidiaries of CN, (2) an explanation of how these notices would impact the operational information provided to the Board in *CN—EJ&E*, and a color-coded map.

Decided: August 17, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–20082 Filed 8–20–09; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted version of the trackage rights agreement between CCP and IC was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35273]

Grand Trunk Western Railroad Company—Trackage Rights Exemption—Wisconsin Central, Ltd.

Pursuant to a written trackage rights agreement dated July 13, 2009, Wisconsin Central, Ltd. (WCL) has agreed to grant nonexclusive trackage rights to Grand Trunk Western Railroad Company (GTW) over WCL's line of railroad extending between the connection with Elgin, Joliet & Eastern Railway Company trackage at or near milepost 37.9 at Leithton, IL, and the connection with CSX Transportation, Inc. trackage at or near milepost 10.9 at Forest Park, IL (Madison Street), on WCL's Waukesha Subdivision, a distance of approximately 27.0 miles, all in the State of Illinois.[1]

GTW proposes to consummate the transaction on or about September 3, 2009, but the earliest it may be consummated is September 4, 2009, the effective date of the exemption (30 days after the exemption is filed). The purpose of the trackage rights is to enable GTW to efficiently handle freight movements between Leithton and Forest Park. The transaction also extends to all industry spurs, connecting tracks and sidings now existent or hereafter constructed along the tracks to be used here, and right-of-way for the tracks to be used here, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of those tracks.

This is one of 17 notices of exemption for trackage rights in the Chicago area submitted simultaneously by carrier subsidiaries of the Canadian National Railway Company (CN). We note that the involved lines of railroad were examined as part of the project area in *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company,* Finance Docket No. 35087 (STB served Dec. 24, 2008) (*CN—EJ&E*). Neither CN nor any of the carriers submitting these notices has explained how the notices relate to each other, or how they would impact the operational information provided to the Board in *CN—EJ&E*. CN and its carrier subsidiaries are directed to submit this information, as well as a color-coded map showing all 17 proposed trackage rights exemptions, by August 21, 2009.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by August 28, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35273, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, 17641 S. Ashland Ave., Homewood, IL 60430.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

It is ordered:

The carriers filing this notice and CN are hereby directed to file by August 21, 2009: (1) An explanation of how this notice relates to the 16 other notices filed simultaneously by carrier subsidiaries of CN, (2) an explanation of how these notices would impact the operational information provided to the Board in *CN—EJ&E*, and (3) a color-coded map.

Decided: August 17, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–20078 Filed 8–20–09; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted version of the trackage rights agreement between WCL and GTW was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35276]

Chicago Central & Pacific Railroad Company—Trackage Rights Exemption—Illinois Central Railroad Company

Pursuant to a written trackage rights agreement dated July 13, 2009, Illinois Central Railroad Company (IC) has agreed to grant nonexclusive trackage rights to Chicago Central & Pacific Railroad Company (CCP) over IC's line of railroad extending between milepost 3.5 (Bridgeport) at Chicago, IL, and the connection with Union Pacific Railroad Company trackage at or near milepost 36.7 (Jackson Street) at Joliet, IL, on IC's Joliet Subdivision, a distance of approximately 33.2 miles, all in the State of Illinois.[1]

The transaction is scheduled to be consummated on or about September 3, 2009, the effective date of the exemption (30 days after the exemption is filed). The purpose of the trackage rights is to enable CCP to efficiently handle freight movements between Bridgeport and Joliet. The transaction also extends to all industry spurs, connecting tracks and sidings now existent or hereafter constructed along the tracks to be used here, and right-of-way for the tracks to be used here, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of those tracks.

This is one of 17 notices of exemption for trackage rights in the Chicago area submitted simultaneously by carrier subsidiaries of the Canadian National Railway Company (CN). We note that the involved lines of railroad were examined as part of the project area in *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company,* Finance Docket No. 35087 (STB served Dec. 24, 2008) (*CN—EJ&E*). Neither CN nor any of the carriers submitting these notices has explained how the notices relate to each other, or how they would impact the information provided to the Board in *CN—EJ&E*. CN and its carrier subsidiaries are directed to submit this information, as well as a color-coded map showing all 17 proposed

[1] A redacted version of the trackage rights agreement between IC and CCP was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

trackage rights exemptions, by August 21, 2009.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by August 27, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35276, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, 17641 S. Ashland Ave., Homewood, IL 60430.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

It is ordered:

The carriers filing this notice and CN are hereby directed to file by August 21, 2009: (1) An explanation of how this notice relates to the 16 other notices filed simultaneously by carrier subsidiaries of CN, (2) an explanation of how these notices would impact the information provided to the Board in *CN—EJ&E*, and (3) a color-coded map.

Decided: August 17, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–20075 Filed 8–20–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35274]

Grand Trunk Western Railroad Company—Trackage Rights Exemption—Chicago Central & Pacific Railroad Company

Pursuant to a written trackage rights agreement dated July 13, 2009, Chicago Central & Pacific Railroad Company (CCP) has agreed to grant nonexclusive trackage rights to Grand Trunk Western Railroad Company (GTW) over 27.4 miles of CCP's Freeport Subdivision between CCP's connection with the Elgin, Joliet & Eastern Railway Company at or near CCP's milepost 35.7 (Munger) at Munger, IL, and CCP's connection with the Illinois Central Railroad Company and the Belt Railway Company of Chicago at or near CCP's milepost 8.3 (Belt Crossing) at Chicago, IL.[1]

The transaction is scheduled to be consummated on or about September 3, 2009, the effective date of the exemption (30 days after the exemption is filed). The purpose of the trackage rights is to enable GTW to efficiently handle freight movements between Munger and Belt Crossing at Chicago. The transaction also extends to all industry spurs, connecting tracks and sidings now existent or hereafter constructed along the tracks to be used here, and right-of-way for the tracks to be used here, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of those tracks.

The transaction is scheduled to be consummated on or about September 4, 2009, the effective date of the exemption (30 days after the exemption is filed).

This is one of 17 notices of exemption for trackage rights in the Chicago area submitted simultaneously by carrier subsidiaries of the Canadian National Railway Company (CN). We note that the involved lines of railroad were examined as part of the project area in *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company,* Finance Docket No. 35087 (STB served Dec. 24, 2008) (*CN—EJ&E*). Neither CN nor any of the carriers submitting these notices has explained how the notices relate to each other, or how they would impact the operational information provided to the Board in *CN—EJ&E.* CNR and its carrier subsidiaries are directed to submit this information, as well as a color-coded map showing all 17 proposed trackage rights exemptions, by August 21, 2009.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by August 27, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35274, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, 17641 S. Ashland Ave., Homewood, IL 60430.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

It is ordered:

The carriers filing this notice and CN are hereby directed to file by August 21, 2009: (1) An explanation of how this notice relates to the 16 other notices filed simultaneously by carrier subsidiaries of CN, (2) an explanation of how these notices would impact the information provided to the Board in *CN—EJ&E*, and (3) a color-coded map.

Decided: August 17, 2009.

[1] A redacted version of the trackage rights agreement between GTW and CCP was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–20072 Filed 8–20–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35278]

Chicago Central & Pacific Railroad Company—Trackage Rights Exemption—Grand Trunk Western Railroad Company

Pursuant to a written trackage rights agreement dated July 13, 2009, Grand Trunk Western Railroad Company (GTW) has agreed to grant nonexclusive trackage rights to Chicago Central & Pacific Railroad Company (CCP) over GTW's line of railroad extending between the east side of the interlocking plant connecting with Elgin, Joliet & Eastern Railway Company trackage at or near milepost 36.1 at Griffith, IN, and GTW's Railport Yard at or near milepost 6.9 in Chicago, IL, on GTW's Elsdon Subdivision, a distance of approximately 29.2 miles, in the States of Illinois and Indiana.[1]

The transaction is scheduled to be consummated on or about September 3, 2009, the effective date of the exemption (30 days after the exemption is filed). The purpose of the trackage rights is to enable CCP to efficiently handle freight movements between Griffith, IN, and GTW's Railport Yard in Chicago, IL. The transaction also extends to all industry spurs, connecting tracks and sidings now existent or hereafter constructed along the tracks to be used here, and right-of-way for the tracks to be used here, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of those tracks.

This is one of 17 notices of exemption for trackage rights in the Chicago area submitted simultaneously by carrier subsidiaries of the Canadian National Railway Company (CN). We note that the involved lines of railroad were examined as part of the project area in *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company,* Finance Docket No. 35087 (STB served Dec. 24, 2008) (*CN—EJ&E*). Neither CN nor any of the carriers submitting these notices has explained how the notices relate to each other, or how they would impact the operational information provided to the Board in *CN—EJ&E*. CN and its carrier subsidiaries are directed to submit this information, as well as a color-coded map showing all 17 proposed trackage rights exemptions, by August 21, 2009.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by August 27, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35278, must be filed with the Surface Transportation Board, 395 E Street, SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, 17641 S. Ashland Ave., Homewood, IL 60430.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov*.''

It is ordered:

The carriers filing this notice and CN are hereby directed to file by August 21, 2009: (1) An explanation of how this notice relates to the 16 other notices filed simultaneously by carrier subsidiaries of CN, (2) an explanation of how these notices would impact the information provided to the Board in *CN—EJ&E*, and (3) a color-coded map.

Decided: August 17, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–20069 Filed 8–20–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35268]

Illinois Central Railroad Company—Trackage Rights Exemption—Grand Trunk Western Railroad Company

Pursuant to a written trackage rights agreement dated July 13, 2009, Grand Trunk Western Railroad Company (GTW) has agreed to grant Illinois Central Railroad Company (IC) nonexclusive trackage rights over GTW's line of railroad between the east side of the interlocking plant for GTW's connection with the Elgin, Joliet & Eastern Railway Company at or near milepost 36.1 at Griffith, IN, and GTW's Railport Yard at or near milepost 6.9 in Chicago, IL, on GTW's Elsdon Subdivision, a distance of approximately 29.2 miles, all in the States of Illinois and Indiana.[1]

The transaction is scheduled to be consummated on or about September 3, 2009, the effective date of the exemption (30 days after the exemption is filed). The purpose of the trackage rights is to enable IC to efficiently handle freight movements between Griffith, IN, and Railport Yard in Chicago. The transaction also extends to all industry spurs, connecting tracks and sidings now existent or hereafter constructed along the tracks to be used here, and right-of-way for the tracks to be used here, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of those tracks.

This is one of 17 notices of exemption for trackage rights in the Chicago area submitted simultaneously by carrier subsidiaries of the Canadian National Railway Company (CN). We note that the involved lines of railroad were examined as part of the project area in *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company,* Finance Docket No. 35087 (STB served Dec. 24,

[1] A redacted version of the trackage rights agreement between GTW and CCP was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

[1] A redacted version of the trackage rights agreement between GTW and IC was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

2008) *CN—EJ&E*). Neither CN nor any of the carriers submitting these notices has explained how the notices relate to each other, or how they would impact the operational information provided to the Board in *CN—EJ&E*. CN and its carrier subsidiaries are directed to submit this information, as well as a color-coded map showing all 17 proposed trackage rights exemptions, by August 21, 2009.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by August 27, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35268, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, 17641 S. Ashland Avenue, Homewood, IL 60430.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

It is ordered:

The carriers filing this notice and CN are hereby directed to file by August 21, 2009: (1) An explanation of how this notice relates to the 16 other notices filed simultaneously by carrier subsidiaries of CN, (2) an explanation of how these notices would impact the information provided to the Board in *CN—EJ&E*, and (3) a color-coded map.

Decided: August 17, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–20090 Filed 8–20–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35269]

Illinois Central Railroad Company—Trackage Rights Exemption—Wisconsin Central, Ltd.

Pursuant to a written trackage rights agreement dated July 13, 2009, Wisconsin Central, Ltd. (WCL) has agreed to grant Illinois Central Railroad Company (IC) nonexclusive trackage rights over WCL's line of railroad between WCL's connection with the Elgin, Joliet & Eastern Railway Company at or near milepost 37.9 at Leithton, IL, and WCL's connection with CSX Transportation, Inc. at or near milepost 10.9 at Forest Park, IL (Madison Street), on WCL's Waukesha Subdivision, a distance of approximately 27.0 miles, all in the State of Illinois.[1]

IC proposes to consummate the transaction on or about September 3, 2009, but the earliest it may be consummated is September 4, 2009, the effective date of the exemption (30 days after the exemption is filed). The purpose of the trackage rights is to enable IC to efficiently handle freight movements between Leithton and Forest Park. The transaction also extends to all industry spurs, connecting tracks and sidings now existent or hereafter constructed along the tracks to be used here, and right-of-way for the tracks to be used here, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of those tracks.

This is one of 17 notices of exemption for trackage rights in the Chicago area submitted simultaneously by carrier subsidiaries of the Canadian National Railway Company (CN). We note that the involved lines of railroad were examined as part of the project area in *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company,* Finance Docket No. 35087 (STB served Dec. 24, 2008) (*CN—EJ&E*). Neither CN nor any of the carriers submitting these notices has explained how the notices relate to each other, or how they would impact the operational information provided to the Board in *CN—EJ&E*. CN and its carrier subsidiaries are directed to submit this information, as well as a color-coded map showing all 17 proposed trackage rights exemptions, by August 21, 2009.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by August 28, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35269, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, 17641 S. Ashland Avenue, Homewood, IL 60430.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

It is ordered:

The carriers filing this notice and CN are hereby directed to file by August 21, 2009: (1) An explanation of how this notice relates to the 16 other notices filed simultaneously by carrier subsidiaries of CN, (2) an explanation of how these notices would impact the information provided to the Board in *CN—EJ&E*, (3) a color-coded map.

Decided: August 17, 2009.

[1] A redacted version of the trackage rights agreement between WCL and IC was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–20089 Filed 8–20–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35270]

Grand Trunk Western Railroad Company—Trackage Rights Exemption—Illinois Central Railroad Company

Pursuant to a written trackage rights agreement dated July 13, 2009, Illinois Central Railroad Company (IC) has agreed to grant Grand Trunk Western Railroad Company (GTW) non-exclusive trackage rights over 11.7 miles of IC's Chicago Subdivision between IC's connection with GTW at or near milepost 19.9 (North Junction) at Harvey, IL, and at or near milepost 31.6 (Stuenkel Road), in University Park, IL.[1]

The transaction is scheduled to be consummated on September 3, 2009, the effective date of the exemption (30 days after the exemption is filed). The purpose of the trackage rights is to enable GTW to efficiently handle freight movements between the junction of Canadian National Railway Company and University Park on IC's Chicago Subdivision. The transaction also extends to all industry spurs, connecting tracks and sidings now existent or hereafter constructed along the tracks to be used here, and right-of-way for the tracks to be used here, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of those tracks.

This is one of 17 notices of exemption for trackage rights in the Chicago area submitted simultaneously by carrier subsidiaries of the Canadian National Railway Company (CN). We note that the involved lines of railroad were examined as part of the project area in *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company,* Finance Docket No. 35087 (STB served Dec. 24, 2008) (*CN—EJ&E*). Neither CN nor any of the carriers submitting these notices has explained how the notices relate to each other, or how they would impact the operational information provided to the Board in *CN—EJ&E*. CN and its carrier subsidiaries are directed to submit this information, as well as a color-coded map showing all 17 proposed trackage rights exemptions, by August 21, 2009.

As a condition to this exemption, any employee affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by August 27, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35270, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, 17641 S. Ashland Avenue, Homewood, IL 60430.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

It is ordered:

The carriers filing this notice and CN, are hereby directed to file by August 21, 2009: (1) An explanation of how this notice relates to the 16 other notices filed simultaneously by carrier subsidiaries of CN, (2) an explanation of how these notices would impact the information provided to the Board in *CN—EJ&E*, and (3) a color-coded map.

Decided: August 17, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–20057 Filed 8–20–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35266]

Elgin, Joliet & Eastern Railway Company—Trackage Rights Exemption—Grand Trunk Western Railroad Company

Pursuant to a written trackage rights agreement dated July 13, 2009, Grand Trunk Western Railroad Company (GTW) has agreed to grant Elgin, Joliet & Eastern Railway Company (EJ&E) nonexclusive trackage rights over GTW's line of railroad between the east side of the interlocking plant for GTW's connection with EJ&E at or near milepost 36.1 at Griffith, IN, and GTW's Railport Yard at or near milepost 6.9 in Chicago, IL, on GTW's Elsdon Subdivision, a distance of approximately 29.2 miles, all in the States of Illinois and Indiana.[1]

The transaction is scheduled to be consummated on or about September 4, 2009, the effective date of the exemption (30 days after the exemption is filed). The purpose of the trackage rights is to enable EJ&E to efficiently handle freight movements between Griffith, IN, and Railport Yard in Chicago. The transaction also extends to all industry spurs, connecting tracks and sidings now existent or hereafter constructed along the tracks to be used here, and right-of-way for the tracks to be used here, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of those tracks.

This is one of 17 notices of exemption for trackage rights in the Chicago area submitted simultaneously by carrier subsidiaries of the Canadian National Railway Company (CN). We note that the involved lines of railroad were examined as part of the project area in *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company,* Finance Docket No. 35087 (STB served Dec. 24, 2008) (*CN—EJ&E*). Neither CN nor any

[1] A redacted version of the trackage rights agreement between IC and GTW was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

[1] A redacted version of the trackage rights agreement between GTW and EJ&E was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

of the carriers submitting these notices has explained how the notices relate to each other, or how they would impact the operational information provided to the Board in *CN—EJ&E*. CN and its carrier subsidiaries are directed to submit this information, as well as a color-coded map showing all 17 proposed trackage rights exemptions, by August 21, 2009.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by August 28, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35266, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, 17641 S. Ashland Avenue, Homewood, IL 60430.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov*.''

It is ordered:

The carriers filing this notice and CN are hereby directed to file by August 21, 2009: (1) An explanation of how this notice relates to the 16 other notices filed simultaneously by carrier subsidiaries of CN, (2) an explanation of how these notices would impact the information provided to the Board in *CN—EJ&E*, and (3) a color-coded map.

Decided: August 17, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–20046 Filed 8–20–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35272]

Grand Trunk Western Railroad Company—Trackage Rights Exemption—Illinois Central Railroad Company

Pursuant to a written trackage rights agreement dated July 13, 2009, Illinois Central Railroad Company (IC) has agreed to grant Grand Trunk Western Railroad Company (GTW) non-exclusive trackage rights over 23.6 miles of IC's Joliet Subdivision between IC's connection with Indiana Harbor Belt Railroad Company at or near milepost 13.1 (CP Canal), at Argo, IL, and IC's connection with Union Pacific Railroad Company at or near milepost 36.7 (Jackson Street), at Joliet, IL.[1]

The transaction is scheduled to be consummated on September 3, 2009, the effective date of the exemption (30 days after the exemption is filed). The purpose of the trackage rights is to enable GTW to efficiently handle freight movements between Argo and Joliet, over IC's Joliet Subdivision. The transaction also extends to all industry spurs, connecting tracks and sidings now existent or hereafter constructed along the tracks to be used here, and right-of-way for the tracks to be used here, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of those tracks.

This is one of 17 notices of exemption for trackage rights in the Chicago area submitted simultaneously by carrier subsidiaries of the Canadian National Railway Company (CN). We note that the involved lines of railroad were examined as part of the project area in *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company,* Finance Docket No. 35087 (STB served Dec. 24, 2008) (*CN—EJ&E*). Neither CN nor any of the carriers submitting these notices has explained how the notices relate to each other, or how they would impact the operational information provided to the Board in *CN—EJ&E*. CN and its carrier subsidiaries are directed to submit this information, as well as a color-coded map showing all 17 proposed trackage rights exemptions, by August 21, 2009.

As a condition to this exemption, any employee affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by August 27, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35272, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, 17641 S. Ashland Avenue, Homewood, IL 60430.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

It is ordered:

The carriers filing this notice and CN are hereby directed to file by August 21, 2009: (1) An explanation of how this notice relates to the 16 other notices filed simultaneously by carrier subsidiaries of CN, (2) an explanation of how these notices would impact the information provided to the Board in *CN—EJ&E*, and (3) a color-coded map.

Decided: August 17, 2009.

[1] A redacted version of the trackage rights agreement between IC and GTW was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–20064 Filed 8–20–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35265]

Elgin, Joliet & Eastern Railway Company—Trackage Rights Exemption—Wisconsin Central, Ltd.

Pursuant to a written trackage rights agreement dated July 13, 2009, Wisconsin Central, Ltd (WCL) has agreed to grant nonexclusive trackage rights to Elgin, Joliet & Eastern Railway Company (EJE) over 27 miles of WCL's Waukesha Subdivision between WCL's connection with EJE at or near milepost 37.9 at Leithton, IL and WCL's connection with CSX Transportation, Inc. at or near milepost 10.9 at Forest Park, IL (Madison Street).[1]

The transaction is scheduled to be consummated on or about September 4, 2009, the effective date of the exemption (30 days after the exemption is filed). The purpose of the trackage rights is to enable EJE to efficiently handle freight movements between Leithon and Forest park on WCL's Waukesha Subdivision. The transaction also extends to all industry spurs, connecting tracks and sidings now existent or hereafter constructed along the tracks to be used here, and right-of-way for the tracks to be used here, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of those tracks.

This is one of 17 notices of exemption for trackage rights in the Chicago area submitted simultaneously by carrier subsidiaries of the Canadian National Railway Company (CN). We note that the involved lines of railroad were examined as part of the project area in *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company,* Finance Docket No. 35087 (STB served Dec. 24, 2008) (*CN—EJ&E*). Neither CN nor any of the carriers submitting these notices has explained how the notices relate to each other, or how they would impact the operational information provided to the Board in *CN—EJ&E*. CN and its carrier subsidiaries are directed to submit this information, as well as a color-coded map showing all 17 proposed trackage rights exemptions, by August 21, 2009.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by August 28, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35265, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, Homewood, IL 60430.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

It is ordered:

The carriers filing this notice and CN are hereby directed to file by August 21, 2009: (1) An explanation of how this notice relates to the 16 other notices filed simultaneously by carrier subsidiaries of CN, (2) an explanation of how these notices would impact the information provided to the Board in *CN—EJ&E*, and (3) a color-coded map.

Decided: August 17, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–20054 Filed 8–20–09; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted version of the trackage rights agreement between EJE and IC was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35264]

Elgin, Joliet & Eastern Railway Company—Trackage Rights Exemption—Illinois Central Railroad Company

Pursuant to a written trackage rights agreement dated July 13, 2009, Illinois Central Railroad Company (IC) has agreed to grant nonexclusive trackage rights to Elgin, Joliet & Eastern Railway Company (EJE) over 27 miles of rail line owned by IC between milepost 7.9 at Chicago, IL (Lemoyne) and milepost 3.5 at Chicago (Bridgeport) on IC's Joliet Subdivision; between IC's connection with The Belt Railway Company of Chicago and the Chicago, Central & Pacific Railroad Company and milepost 8.3 at Chicago (Belt Crossing) and milepost 2.1 (16th Street) at Chicago on IC's Freeport Subdivision; and between milepost 1.5 (16th Street) at Chicago and IC's connection to the Indiana Harbor Belt Railroad Company at milepost 17.9 at Riverdale, IL (Highlawn) on IC's Chicago Subdivision.[1]

The transaction is scheduled to be consummated on or about September 4, 2009, the effective date of the exemption (30 days after the exemption is filed). The purpose of the trackage rights is to enable EJE to efficiently handle freight movements between Lemoyne and Highlawn on IC's Chicago Subdivision. The transaction also extends to all industry spurs, connecting tracks and sidings now existent or hereafter constructed along the tracks to be used here, and right-of-way for the tracks to be used here, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of those tracks.

This is one of 17 notices of exemption for trackage rights in the Chicago area submitted simultaneously by carrier subsidiaries of the Canadian National Railway Company (CN). We note that

[1] A redacted version of the trackage rights agreement between EJE and IC was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

the involved lines of railroad were examined as part of the project area in *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company,* Finance Docket No. 35087 (STB served Dec. 24, 2008) (*CN—EJ&E*). Neither CN nor any of the carriers submitting these notices has explained how the notices relate to each other, or how they would impact the operational information provided to the Board in *CN—EJ&E.* CN and its carrier subsidiaries are directed to submit this information, as well as a color-coded map showing all 17 proposed trackage rights exemptions, by August 21, 2009.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by August 28, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35264, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, 17641 S. Ashland Ave., Homewood, IL 60430.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

It is ordered:

The carriers filing this notice and CN are hereby directed to file by August 21, 2009: (1) An explanation of how this notice relates to the 16 other notices filed simultaneously by carrier subsidiaries of CN, (2) an explanation of how these notices would impact the information provided to the Board in *CN—EJ&E*, and (3) a color-coded map.

Decided: August 17, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–20055 Filed 8–20–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Indianapolis International Airport, Indianapolis, IN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the release of 17.79 acres of airport property for non-aeronautical development. The land consists of portions of 7 original airport acquired parcels. These parcels were acquired under grants: 6–18–0038–01; 3–18–0038–45; and 3–180038–47 or without federal participation. The land currently has three empty office buildings previously used by air carriers. The future use of the property is for nonaviation office development.

There are no impacts to the airport by allowing the Indianapolis Airport Authority to dispose of the property.

The land is not needed for aeronautical use. Approval does not constitute a commitment by the FAA to financially assist in the sale or lease of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before September 21, 2009.

ADDRESSES: Written comments on the Sponsor's request must be delivered or mailed to: Melanie Myers, Program Manager, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, IL 60018.

FOR FURTHER INFORMATION CONTACT: Melanie Myers, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, CHI-ADO 609, 2300 East Devon Avenue, Des Plaines, IL 60018 Telephone Number (847–294–7525)/ FAX Number (847–294–7046). Documents reflecting this FAA action may be reviewed at this same location or at Indianapolis International Airport, Indianapolis, Indiana.

SUPPLEMENTARY INFORMATION:

Parcel A

Part of the Southeast Quarter of Section 15, Township 15 North, Range 2 East, of the Second Principal Meridian, all in Marion County, Indiana, more particularly described as follows: Commencing at the Northeast Corner of said Southeast Quarter Section; thence South 00 degrees 07 minutes 05 seconds West along the East line of said Quarter Section 531.08 feet to a point on the South right-of-way line of Washington Street (US 40); thence South 68 degrees 50 minutes 00 seconds West along said right-of-way line 12.88 feet; thence South 00 degrees 07 minutes 05 seconds West along a line being parallel with and 12 feet West of the East line of the above mentioned Quarter Section 466.59 feet; thence North 89 degrees 52 minutes 55 seconds West perpendicular to the aforesaid East line 239.65 feet; thence North 00 degrees 07 minutes 05 seconds East 62.00 feet; thence North 89 degrees 52 minutes 55 seconds West 283.00 feet to the *point of beginning* of this description; thence South 00 degrees 07 minutes 05 seconds West 176.00 feet; thence South 89 degrees 52 minutes 55 seconds East 55.00 feet; thence South 26 degrees 26 minutes 49 seconds East 33.54 feet; thence South 00 degrees 07 minutes 05 seconds West 140.80 feet; thence South 89 degrees 07 minutes 30 seconds East 15.00 feet; thence South 00 degrees 07 minutes 05 seconds West 303.00 feet to a point on the North right-of-way line of the Penn Central Transportation Company; thence Southwesterly 453.76 feet along a curve to the right having a radius of 2789.93 feet and subtended by a long chord having a bearing of South 84 degrees 04 minutes 16 seconds West and a length of 453.26 feet; thence North 00 degrees 07 minutes 05 seconds East 756.23 feet to a point on the South right-of-way line of Washington Street (US 40); thence North 68 degrees 50 minutes 00 seconds East along said South right-of-way line 345.00 feet; thence South 29 degrees 14

minutes 04 seconds East 90.32 feet; thence South 00 degrees 07 minutes 05 seconds West 105.00 feet to the place of beginning containing 7.670 acres, more or less, subject however to all legal highways, right-of-way, easements and restrictions of record, including not limited to the following described easements:

Easement 1

Part of the Southeast Quarter of Section 15, Township 15 North, Range 2 East, of the Second Principal Meridian, all in Marion County, Indiana, more particularly described as follows: Commencing at the Northeast Corner of said Southeast Quarter Section; thence South 00 degrees 07 minutes 05 seconds West along the East line of said Quarter Section 531.08 feet to a point on the South right-of-way line of Washing Street (US 40); thence south 68 degrees 50 minutes 00 seconds West along said right-of-way line 12.88 feet; thence South 00 degrees 07 minutes 05 seconds West along a line being parallel with and 12 feet West of the East line of the above mentioned Quarter Section 466.59 feet; thence North 89 degrees 52 minutes 55 seconds West perpendicular to the aforesaid East line 239.65 feet; thence North 00 degrees 07 minutes 05 seconds East 62.00 feet; thence North 89 degrees 52 minutes 55 seconds West 283.00 feet to the *point of beginning* of this description; thence South 00 degrees 07 minutes 05 seconds West 176.00 feet; thence South 89 degrees 52 minutes 55 seconds East 55.00 feet; thence South 26 degrees 26 minutes 49 seconds East 33.54 feet; thence South 00 degrees 07 minutes 30 seconds West 15.00 feet; thence North 00 degrees 07 minutes 05 seconds East 106.10 feet; thence North 40 degrees 20 minutes 18 seconds West 64.00 feet; thence North 89 degrees 52 minutes 55 seconds West 38.47 feet; thence North 00 degrees 07 seconds 05 minutes East 23.00 feet; thence North 10 degrees 06 minutes 12 seconds East 57.67 feet; thence North 00 degrees 07 minutes 05 seconds East 182.47 feet; thence North 29 degrees 14 minutes 04 seconds West 117.32 feet to the South right-of-way line of Washington Street (US 40); thence North 68 degrees 50 minutes 00 seconds East along said South right-of-way line 30.30 feet; thence South 29 degrees 14 minutes 04 seconds East 90.32 feet; thence South 00 degrees 07 minutes 05 seconds West 105.00 feet to the place of beginning, containing 0.276 acres, more or less.

Easement 2

Part of the Southeast Quarter of Section 15, Township 15 North, Range 2 East, of the Second Principal Meridian, all in Marion County, Indiana, more particularly described as follows: Commencing at the northeast Corner as said Southeast Quarter Section; thence South 00 degrees 07 minutes 05 seconds West along the East line of said Quarter Section 531.08 feet to a point on the South right-of-way line of Washington Street (US 40); thence South 68 degrees 50 minutes 00 seconds West along said right-of-way line 12.88 feet; thence South 00 degrees 07 minutes 05 seconds West along a line being parallel with and 12 feet West of the East line of the above mentioned Quarter Section 466.59 feet; thence North 89 degrees 52 minutes 55 seconds West perpendicular to the aforesaid East line 239.65 feet; thence South 00 degrees 07 minutes 05 seconds West 543.04 feet to a point on the North right-of-way of the Penn Central Transportation Company; thence Southwesterly 203.08 feet along a curve to the right having a radius of 2789.93 feet and subtended by a long chord having a bearing of South 77 degrees 19 minutes 35 seconds West and a length of 203.04 feet to the *point of beginning* of this description; thence continuing along said North right-of-way line Southwesterly 453.76 feet along a curve to the right having a radius of 2789.93 feet and subtended by a long chord having bearing of South 84 degrees 04 minutes 16 seconds West and a length of 453.26 feet; thence North 00 degrees 07 minutes 05 seconds East 40.00 feet; thence North 79 degrees 28 minutes 06 seconds East 179.45 feet; thence South 00 degrees 07 minutes 05 seconds West 48.85 feet to the place of beginning, containing 0.467 acres more or less.

Easement 3

Part of the Southeast Quarter of Section 15, Township 15 North, Range 2 East, of the Second Principal Meridian, all in Marion County, Indiana, more particularly described as follows: Commencing at the Northeast Corner of said Southeast Quarter Section; thence South 00 degrees 07 minutes 05 seconds West along the East line of said Quarter Section 531.08 feet to a point on the South right-of-way line of Washington Street (US 40); thence South 68 degrees 50 minutes 00 seconds West along said right-of-way line 12.88 feet; thence South 00 degrees 07 minutes 05 seconds West along a line being parallel with and 12 feet West of the East line of the above mentioned Quarter Section 466.59 feet; thence North 89 degrees 52 minutes 55 seconds West perpendicular to the aforesaid East line 239.65 feet; thence South 00 degrees 07 minutes 05 seconds West 543.04 feet to a point on the North right-of-way line of the Penn Central Transportation Company; thence Southwesterly 203.08 feet along a curve to the right having a radius of 2789.93 feet and subtended by a long chord having a bearing of South 77 degrees 19 minutes 35 seconds West and a length of 203.04 feet to the *point of beginning* of this description; thence continuing along said North right-of-way line Southwesterly 30.50 feet along a curve to the right having a radius of 2789.93 feet and subtended by a long chord having a bearing of South 79 degrees 43 minutes 30 seconds West and a length of 30.50 feet; thence North 00 degrees 07 minutes 05 seconds East 308.90 feet; thence South 89 degrees 07 minutes 30 seconds West 30.00 feet; thence South 00 degrees 07 minutes 05 seconds West 303.00 feet to the place of beginning, containing 0.211 acres more or less.

Parcel B

Part of the Southeast Quarter of Section 15, Township 15 North, Range 2 East, of the Second Principal Meridian, all in Marion County, Indiana, more particularly described as follows: Commencing at the Northeast Corner of said Southeast Quarter Section; thence South 00 degrees 07 minutes 05 seconds West along the east line of said Quarter Section 531.08 feet to a point on the South Right-of-Way line of Washington Street (US 40); thence South 68 degrees 50 minutes 00 seconds West along said right-of-way line 12.88 feet; thence South 00 degrees 07 minutes 05 seconds West along a line being parallel with and 12 feet West of the East line of the above mention Quarter Section 466.59 feet; thence North 89 degrees 52 minutes 55 seconds West perpendicular to the aforesaid East line 239.65 feet to the *point of beginning* of this description; thence South 00 degrees 07 minutes 05 seconds West 543.04 feet to a point on the North right-of-way line of Penn Central Transportation Company; thence Southwesterly 203.08 feet along a curve to the right having a radius of 2789.93 feet and subtended by a long chord having a bearing of South 77 degrees 19 minutes 35 seconds West and a length of 203.04 feet; thence North 00 degrees 07 minutes 05 seconds East 303.00 feet; thence North 89 degrees 07 minutes 30 seconds West 15.00 feet; thence North 00 degrees 07 minutes 05 seconds East 140.80 feet; thence North 26 degrees 26 minutes 49 seconds West 33.54 feet; thence North 89 degrees 52 minutes 55 seconds West 55.00 feet; thence North 00 degrees 07 minutes 05 seconds East 176.00 feet; thence South 89 degrees 52 minutes 55 seconds East 283.00 feet;

thence South 00 degrees 07 minutes 05 seconds West 62.00 feet to the place of beginning, containing 3.266 acres more or less, subject to however all legal highways, right-of-ways, easements, and restrictions of record, including but not limited to the following described easements:

Easement 1

Part of the Southeast Quarter of Section 15, Township 15 North, Range 2 East, of the Second Principal Meridian, all in Marion County, Indiana, more particularly described as follows: Commencing at the Northeast Corner of said Southeast Quarter Section; thence South 00 degrees 07 minutes 05 seconds West along the East line of said Quarter Section 531.08 feet to a point on the South Right-of-Way line of Washington Street (US 40); thence South 68 degrees 50 minutes 00 seconds West along said right-of-way line 12.88 feet; thence South 00 degrees 07 minutes 05 seconds West along a line being parallel with and 12 feet West of the East line of the above mentioned Quarter Section 466.59 feet; thence North 89 degrees 52 minutes 55 seconds West 239.65 feet; thence North 00 degrees 07 minutes 05 seconds East 32.00 feet to the *point of beginning* of this description; thence North 89 degrees 52 minutes 55 seconds West 215.00 feet; thence South 01 degrees 27 minutes 07 seconds East 146.54 feet; thence South 26 degrees 26 minutes 49 seconds East 29.04 feet; thence South 00 degrees 07 minutes 05 seconds West 144.54 feet; thence North 89 degrees 07 minutes 30 seconds West 15.00 feet; thence North 00 degrees 07 minutes 05 seconds East 140.80 feet; thence North 26 degrees 26 minutes 49 seconds West 33.54 feet; thence North 89 degrees 52 minutes 55 seconds West 55.00 feet; thence North 00 degrees 07 minutes 05 seconds East 176.00 feet; thence South 89 degrees 52 minutes 55 seconds East 283.00 feet; thence South 00 degrees 07 minutes 05 seconds West 30.00 feet to the place of beginning containing 0.489 acres, more or less.

Easement 2

Part of the Southeast Quarter of Section 15, Township 15 North, Range 2 East, of the Second Principal Meridian, all in Marion County, Indiana, more particularly described as follows: Commencing at the Northeast Corner of said Southeast Quarter Section; thence South 00 degrees 07 minutes 05 seconds West along the East line of said Quarter Section 531.08 feet to a point on the South Right-of-Way line of Washington Street (US 40); thence South 68 degrees 50 minutes 00 seconds West along said right-of-way line 12.88 feet; thence South 00 degrees 07 minutes 05 seconds West along a line being parallel with and 12 feet West of the East line of the above mentioned Quarter Section 466.59 feet; thence North 89 degrees 52 minutes 55 seconds West perpendicular to the aforesaid East line 239.65 feet to the *point of beginning* of this description; thence South degrees 07 minutes 05 seconds West 543.04 feet to a point on the North right-of-way line of the Penn Central Transportation Company; thence Southwesterly 203.08 feet along a curve to the right having a radius of 2789.93 feet and subtended by a long chord having a bearing of South 77 degrees 19 minutes 35 seconds West and a length of 203.04 feet; thence North 00 degrees 07 minutes 05 seconds East 48.85 feet; thence North 79 degrees 28 minutes 06 seconds East 170.30 feet; thence North 01 degrees 39 minutes 58 seconds East 123.00 feet; thence North 47 degrees 28 minutes 46 seconds West 58.68 feet; thence North 89 degrees 07 minutes 30 seconds West 115.00 feet; thence North 00 degrees 07 minutes 05 seconds East 20.00 feet; thence South 89 degrees 07 minutes 30 seconds East 159.93 feet; thence North 01 degrees 39 minutes 58 seconds East 299.22 feet; thence South 89 degrees 52 minutes 55 seconds East 30.00 feet; thence South 00 degrees 07 minutes 05 seconds West 32.00 feet to the place of beginning, containing 0.865 acres more or less.

Parcel C

Part of the Southeast Quarter of Section 15; Township 15 North, Range 2 East, of the Second Principal Meridian, all in Marion County, more particularly described as follows: Commencing at the Northeast Corner of said Southeast Quarter Section; thence South 00 degrees 07 minutes 05 seconds West along the East line of said Quarter Section 531.08 feet to a point on the South Right-of-Way line of Washington Street (US 40); thence South 68 degrees 50 minutes 00 seconds West along said right-of-way line 12.88 feet to the *point of beginning* of this description; thence South 00 degrees 07 minutes 05 seconds West along a line being parallel with and 12 feet West of the East line of the above mentioned Quarter Section 466.59 feet; thence North 89 degrees 52 minutes 55 seconds West 239.65 feet; thence North 00 degrees 07 minutes 05 seconds East 62.00 feet; thence North 89 degrees 52 minutes 55 seconds West 107.46 feet; thence North 00 degrees 07 minutes 05 seconds East 269.36 feet to a point on the South Right-of-Way line of Washington Street (US 40); thence North 68 degrees 50 minutes 00 seconds East along said South right-of-way line 372.52 feet to the *point of beginning* and containing 3.026 acres, more or less, subject however to all legal highways, right-of-way, and restrictions of record including but not limited to the following described easement: Part of the Southeast Quarter of Section 15, Township 15 North, Range 2 East, of the Second Principal Meridian, all in Marion County, Indiana, more particularly described as follows: Commencing at the Northeast Corner of said Southeast Quarter Section; thence South 00 degrees 07 minutes 05 seconds West along the East line of said Quarter Section 531.08 feet to a point on the South Right-of-Way line of Washington Street (US 40); thence South 68 degrees 50 minutes 00 seconds West along said right-of-way line 12.88 feet; thence South 00 degrees 07 minutes 05 seconds West along a line being parallel with and 12 feet West of the East line of the above mentioned Quarter Section 388.59 feet to the *point of beginning* of this description; thence continuing South 00 degrees 07 minutes 05 seconds West 30.00 feet; thence North 89 degrees 52 minutes 55 seconds West 239.65 feet; thence North 00 degrees 07 minutes 05 seconds East 14.00 feet; thence North 89 degrees 52 minutes 55 seconds East 16.00 feet; thence South 89 degrees 52 minutes 55 seconds East 347.11 feet to the place of beginning containing 0.204 acres more or less.

Parcel D

Part of the Southeast Quarter of Section 15; Township 15 North, Range 2 East, of the Second Principal Meridian, all in Marion County, Indiana more particularly described as follows:

Commencing at the Northeast Corner of said Southeast Quarter Section; thence South 00 degrees 07 minutes 05 seconds West along the East line of said Quarter Section 531.08 feet to a point on the South Right-of-Way line of Washington Street (US 40); thence South 68 degrees 50 minutes 00 seconds West along said right-of-way line 12.88 feet; thence South 00 degrees 07 minutes 05 seconds West along a line being parallel with and 12 feet West of the East line of the above mentioned Quarter Section 466.59 feet; thence North 89 degrees 52 minutes 55 seconds West perpendicular to the aforesaid East line 239.65 feet; thence North 00 degrees 07 minutes 05 seconds East 62.00 feet; thence North 89 degrees 52 minutes 55 seconds West 107.46 feet to the *point of beginning* of this description; thence North 00 degrees 07 minutes 05 seconds East 269.36 feet to a point on the South Right-of-Way line

of Washington Street (US 40); thence South 68 degrees 50 minutes 00 seconds West along said South right-of-way line 235.91 feet; thence South 29 degrees 14 minutes 04 seconds East 90.32 feet; thence South 00 degrees 07 minutes 05 seconds West 105.00 feet; thence South 89 degrees 52 minutes 55 seconds East 175.54 feet to the place of beginning containing 0.996 acres, more or less, subject however to all legal highways, rights-of-way, easements, and restrictions of record, including but not limited to the following described easement: Part of the Southeast Quarter of Section 15, Township 15 North, Range 2 East, of the Second Principal Meridian, all in Marion County, Indiana, more particularly described as follows: Commencing at the Northeast Corner of said Southeast Quarter Section; thence South 00 degrees 07 minutes 05 seconds West along the East line of said Quarter Section 531.08 feet to a point on the South Right-of-Way line of Washington Street (US 40); thence South 68 degrees 50 minutes 00 seconds West along said right-of-way 12.88 feet; thence South 00 degrees 07 minutes 05 seconds West along a line being parallel with and 12 feet West of the East line of the above mentioned Quarter Section 466.59 feet; thence North 89 degrees 52 minutes 55 seconds West 239.65 feet; thence North 00 degrees 07 minutes 05 seconds East 62.00 feet; thence North 89 degrees 52 minutes 55 seconds West 107.46 feet to the *point of beginning* of this description; thence North 00 degrees 07 minutes 05 seconds East 16.00 feet; thence North 89 degrees 52 minutes 55 seconds West 108.80 feet; thence North 01 degrees 27 minutes 07 seconds West 208.82 feet to a point on the South Right-of-Way line of Washington Street (US 40); thence South 68 degrees 50 minutes 00 seconds West along said South right-of-way line 113.00 feet; thence South 29 degrees 14 minutes 04 seconds East 90.32 feet; thence South 00 degrees 07 minutes 05 seconds West 105.00 feet; thence South 89 degrees 52 minutes 55 seconds East 175.54 feet to the place of beginning containing 0.403 acres, more or less.

Parcel E

Part of the Southeast Quarter of Section 15; Township 15 North, Range 2 East, Marion County, Indiana, described as follows: Commencing at the Southwest Corner of said Southeast Quarter, said corner being marked by a bronze disc inscribed ''Indianapolis Airport Authority 22–C'' set in concrete, thence North 89 degrees 49 minutes 01 seconds East (bearings based on NAD 1983 per Indianapolis Airport Authority Master Plan) along the South line of said Southeast Quarter 1736.32 feet; thence North 00 degrees 10 minutes 59 seconds West 1086.94 feet to the *point of beginning,* said point being marked by a fence post at the Southeast corner of a chain link fence; thence South 89 degrees 58 minutes 32 seconds West 162.45 feet to a fence post at the Southwest corner of said fence; thence North 00 degrees 08 minutes 40 seconds East 275.21 feet to a fence post at the Northwest corner of said fence, thence South 89 degrees 55 minutes 52 seconds East 162.30 feet to a fence post at the Northeast corner of said fence; thence South 00 degrees 06 minutes 53 seconds West 274.94 feet to the point of beginning, containing 1.025 acres, more or less.

Parcel F

Part of the Southeast Quarter of Section 15; Township 15 North, Range 2 East, Marion County, Indiana, described as follows:

Commencing at the Southwest Corner of said Southeast Quarter, said corner being marked by a bronze disc inscribed ''Indianapolis Airport Authority 22–C'' set in concrete, thence North 89 degrees 49 minutes 01 seconds East (bearings based on NAD 1983 per Indianapolis Airport Authority Master Plan) along the South line of said Southeast Quarter 1736.32 feet; thence North 00 degrees 10 minutes 59 seconds West 1086.04 feet; thence North 00 degrees 06 minutes 53 seconds East 274.94 feet to the *point of beginning,* said point being marked by a fence post at the Northeast corner of a chain link fence; thence North 89 degrees 55 minutes 52 seconds West 162.30 feet to a fence post at the Northwest corner of said fence, thence North 00 degrees 06 minutes 53 seconds East 138.00 feet; thence South 89 degrees 55 minutes 52 seconds East 162.30 feet to a North-South fence line; thence South 00 degrees 06 minutes 53 seconds West along said fence line 138.00 feet to the point of beginning, containing 0.514 acres, more or less.

Issued in Des Plaines, Illinois, on July 30, 2009.

Jack Delaney,

Acting Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. E9–20124 Filed 8–20–09; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Friday,
August 21, 2009

Part II

Department of Education

34 CFR Parts 600, 668, 675, et al.
General and Non-Loan Programmatic Issues; Proposed Rule

DEPARTMENT OF EDUCATION

[Docket ID ED–2009–OPE–0005]

34 CFR Parts 600, 668, 675, 686, 690, and 692

RIN 1840–AC99

General and Non-Loan Programmatic Issues

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to implement various general and non-loan provisions that were added to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Opportunity Act of 2008 (HEOA) by amending the regulations for Institutional Eligibility Under the Higher Education Act of 1965, the Student Assistance General Provisions, the Federal Work-Study (FWS) Programs, the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program, the Federal Pell Grant Program, and the Leveraging Educational Assistance Partnership Program (LEAP).

DATES: We must receive your comments on or before September 21, 2009.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.''
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Jessica Finkel, U.S. Department of Education, 1990 K Street, NW., room 8031, Washington, DC 20006–8502.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: For general information or information related to the non-Title IV revenue requirement (90/10), John Kolotos. Telephone: (202) 502–7762 or via the Internet at: *John.Kolotos@ed.gov*.

For information related to all Federal Pell Grant Program issues and the LEAP/GAP Program, Fred Sellers and Jacquelyn Butler. Telephone: (202) 502–7502 and (202) 502–7890, respectively, or via the Internet at: *Fred.Sellers@ed.gov* or *Jacquelyn.Butler@ed.gov*.

For information related to the provisions for readmission for servicemembers, teach-outs, peer-to-peer file sharing, baccalaureate in liberal arts, and institutional plans for improving the academic program, Wendy Macias. Telephone: (202) 502–7526 or via the Internet at: *Wendy.Macias@ed.gov*.

For information related to all Federal Work-Study Program issues, Nikki Harris and Harold McCullough. Telephone: (202) 219–7050 and (202) 377–4030, respectively, or via the Internet at *Nikki.Harris@ed.gov* or *Harold.McCullough@ed.gov*.

For information related to the provisions for fire safety standards, missing students procedures, hate crime reporting, emergency response and evacuation, and students with intellectual disabilities, Jessica Finkel. Telephone: (202) 502–7647 or via the Internet at: *Jessica.Finkel@ed.gov*.

For information related to the provisions for extenuating circumstances under the TEACH Grant Program, Jacquelyn Butler. Telephone: (202) 502–7890, or via the Internet at: *Jacquelyn.Butler@ed.gov*.

For information related to the consumer information requirements, Brian Kerrigan. Telephone: (202) 219–7058, or via the Internet at: *Brian.Kerrigan@ed.gov*.

If you use a telecommunications device for the deaf, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

As outlined in the section of this notice entitled *Negotiated Rulemaking*, significant public participation, through six public hearings and three negotiated rulemaking sessions, has occurred in developing this notice of proposed rulemaking (NPRM). In accordance with the requirements of the Administrative Procedure Act, the Department invites you to submit comments regarding these proposed regulations on or before September 21, 2009. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations. Note that enactment as final regulations of any and all provisions of these proposed regulations is subject to the availability of sufficient administrative savings and any provision may be removed from the final rules if sufficient savings do not materialize.

We invite you to assist us in complying with the specific requirements of Executive Order 12866, including its overall requirements to assess both the costs and the benefits of the proposed regulations and feasible alternatives, and to make a reasoned determination that the benefits of these proposed regulations justify their costs. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

As noted elsewhere in the NPRM, two of the Department's negotiated rulemaking committees were to a minor extent involved in the proposed revisions to 34 CFR 668.184(a)(1) (Determining cohort default rates for institutions that have undergone a change in status) in part 668, subpart M of the Student Assistance General Provisions. Team V–General and Non-Loan Programmatic Issues (Team V), was the negotiating committee responsible for the regulations regarding the treatment of cohort default rates for institutions that conduct teach-outs of closed institutions. Team II–Loans-School-based Issues (Team II), negotiated all other changes to cohort default rates.

We have included the proposed change to 34 CFR 668.184(a)(1) in this NPRM as well as in the notice of proposed rulemaking that we are publishing as a result of the negotiations of Team II. The proposed change is simply a cross-reference in 34 CFR 668.184(a)(1) to 34 CFR 600.32(d) which provides that under certain circumstances the cohort default rate of a closed institution does not transfer in any way to the institution that conducts

a teach-out at the site of the closed institution. We ask that when submitting any comments on the proposed changes to §§ 600.32(d) or 668.184(a)(1), you submit the comments in the docket for this NPRM (Docket ID ED–2009–OPE–0005).

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, in room 8031, 1990 K Street, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Negotiated Rulemaking

Section 492 of the HEA requires the Secretary, before publishing any proposed regulations for programs authorized by Title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the Federal student financial assistance programs, the Secretary must subject the proposed regulations to a negotiated rulemaking process. All proposed regulations that the Department publishes on which the negotiators reached consensus must conform to final agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process can be found at: *http://www.ed.gov/policy/highered/leg/hea08/index.html*.

On December 31, 2009, the Department published a notice in the **Federal Register** (73 FR 80314) announcing our intent to establish five negotiated rulemaking committees to prepare proposed regulations. One committee would focus on issues related to lender and general loan issues (Team I—Loans—Lender General Loan Issues). A second committee would focus on school-based loan issues (Team II—Loans—School-based Loan Issues). A third committee would focus on accreditation (Team III—Accreditation). A fourth committee would focus on discretionary grants (Team IV—Discretionary Grants). A fifth committee would focus on general and non-loan programmatic issues (Team V—General and Non-Loan Programmatic Issues). The notice requested nominations of individuals for membership on the committees who could represent the interests of key stakeholder constituencies on each committee.

Team V—General and Non-Loan Programmatic Issues (Team V) met to develop proposed regulations during the months of March 2009, April 2009, and May 2009. Team V agreed to establish five subcommittees to facilitate the discussion of the issues and expedite the development of the proposed regulations. The subcommittees included some of non-Federal negotiators and their alternates, outside experts regarding the particular issues addressed by a subcommittee, ED staff, and other interested parties. The subcommittees were:

(1) Campus Safety, responsible for issues relating to Fire Safety Standards, Missing Student Procedures, Hate Crime Reporting, and Emergency Response and Evacuation Procedures.

(2) Peer-to-Peer File Sharing, responsible for issues relating to illegal downloading of copyrighted materials.

(3) Intellectual Disabilities, responsible for issues relating to establishing title IV eligible educational programs for students with intellectual disabilities.

(4) LEAP/GAP, responsible for issues relating to LEAP and GAP programs.

(5) 90/10, responsible for issues relating to the requirement that a proprietary institution must derive at least 10 percent of its revenue from sources other than funds from the title IV, HEA programs.

In this NPRM we propose regulations for a variety of provisions, stemming from the work of the subcommittees and main committee, relating to the Federal grant and work-study programs, campus safety, educational programs for students with intellectual disabilities, copyright infringement, teach-outs, readmission of servicemembers, and non-Title IV revenue.

The Department developed a list of proposed regulatory provisions based on the provisions contained in the HEOA and from advice and recommendations submitted by individuals and organizations as testimony to the Department in a series of six public hearings held on:

- September 19, 2008, at Texas Christian University in Fort Worth, Texas;
- September 29, 2008, at the University of Rhode Island, in Providence, Rhode Island;
- October 2, 2008, at Pepperdine University, in Malibu, California;
- October 6, 2008, at Johnson C. Smith University, in Charlotte, North Carolina;
- October 8, 2008, at the U.S. Department of Education in Washington, DC; and
- October 15, 2008, at Cuyahoga Community College, in Cleveland, Ohio.

In addition, the Department accepted written comments on possible regulatory provisions submitted directly to the Department by interested parties and organizations. A summary of all comments received orally and in writing is posted as background material in the docket for this NPRM. Transcripts of the regional meetings can be accessed at *http://www.ed.gov/policy/highered/leg/hea08/index.html*.

Staff within the Department also identified issues for discussion and negotiation.

At its first meeting, Team V reached agreement on its protocols. These protocols provided that for each community of interest identified as having interests that were significantly affected by the subject matter of the negotiations, the non-Federal negotiators would represent the organizations listed after their names in the protocols in the negotiated rulemaking process.

Team V included the following members:

- Clais Daniels-Edwards, University of California Student Association, and Serena Unrein (alternate), Arizona Students Association, representing students.
- David Baime, American Association of Community Colleges, and Dr. Karla Leach (alternate), Western Wyoming Community College, representing two-year public institutions.
- John Curtice, State University of New York, and Karen Fooks (alternate), University of Florida, representing four-year public institutions.
- Scott Fleming, Georgetown University, and Suzanne Day (alternate), Harvard University, representing private, non-profit institutions.
- Elaine Neely, Kaplan Higher Education Corp., and Mark Pelesh (alternate), Corinthian Colleges, Inc., representing private, for-profit institutions.
- Ray Testa, Empire Education Group, and Dr. Richard Dumaresq

(alternate), Pennsylvania Association of Private School Administrators, representing cosmetology schools.

• David Tipton, Berea College, and Ian Robertson (alternate), Warren Wilson College, representing work colleges.

• Dr. Ray Keck, Texas A&M International University, and Karl Brockenbrough (alternate), Bowie State University, representing minority-serving institutions.

• David Gelinas, Davidson College, and David Smedley (alternate), George Washington University, representing financial aid administrators.

• Sandy Tallman, Ross Education LLC, and Diane Fleming (alternate), Central Michigan University, representing financial aid administrators.

• Karen McCarthy, NASFAA, and Joan Berkes (alternate), NASFAA, representing financial aid administrators.

• Maureen Laffey, Delaware Higher Education Commission, and Dr. Alan Edwards (alternate), State Council of Higher Education for Virginia, representing State student grant agencies.

• Dr. Nick Bruno, University of Louisiana System, and John Higgins (alternate), Purdue University, representing business officers and bursars.

• Dr. John Cavanaugh, Pennsylvania State Systems of Higher Education, representing State higher education executive officers.

• S. Daniel Carter, Security on Campus, Inc., and Jonathan Kassa (alternate), Security on Campus, Inc., representing campus safety advocates.

• Brendan McCluskey, UMDJ Office of Emergency Management, and Dr. John Petrie (alternate), George Washington University, representing campus safety administrators.

• Ed Comeau, Campus Firewatch, and Phil Hagen (alternate) Georgetown University, representing fire safety advocates and administrators.

• Paul D. Martin, Center for Campus Fire Safety, representing fire safety advocates.

• Michael Lieberman, Anti-Defamation League, and Cristina Finch (alternate), Human Rights Campaign, representing human rights advocates.

• Delores Stafford, George Washington University, and Lisa Phillips (alternate), IACLEA, representing law enforcement.

• Stephanie Smith Lee, NDSS, and Madeleine C. Will (alternate), representing individuals with intellectual disabilities.

• Gregory Jackson, The University of Chicago, and Matthew Arthur (alternate), representing institutions on peer-to-peer file sharing.

• David Green, NBC Universal, and Jennifer Jacobsen (alternate), Sony Music Entertainment, representing digital content owners on peer-to-peer file sharing.

• Brian Kerrigan, U.S. Department of Education, representing the Federal Government.

These protocols also provided that, unless agreed to otherwise, consensus on all of the amendments in the proposed regulations had to be achieved for consensus to be reached on the entire NPRM. Consensus means that there must be no dissent by any member.

During the meetings, Team V reviewed and discussed drafts of proposed regulations. At the final meeting in May 2009, Team V did not reach consensus on the proposed regulations in this document.

Summary of Proposed Changes

These proposed regulations would implement general and non-Loan provisions of the HEA, as amended by the HEOA, including:

• Establishing requirements under which students may receive up to two Federal Pell Grant Scheduled Awards during a single award year (see section 401(b)(5)(A) of the HEA);

• Providing the maximum Federal Pell Grant eligibility to a student whose parent was in the armed forces and died in Iraq or Afghanistan if the student was under 24 years old or enrolled in an institution of higher education at the time the parent died (see section 401(F)(4) of the HEA);

• Establishing extenuating circumstances under which a TEACH Grant recipient may be excused from fulfilling all or part of his or her service obligation (see section 420N(d)(2) of the HEA);

• Expanding the use of FWS funds to permit institutions to compensate students employed in projects that teach civics in school, raise awareness of government functions or resources, or increase civic participation (see section 443 of the HEA);

• Allowing institutions located in major disaster areas to make FWS payments to disaster-affected students (see section 445(d) of the HEA).

• Revising definitions and terms relating to work colleges (see section 448 of the HEA).

• Establishing new requirements for determining how proprietary institutions calculate the amount and percent of revenue derived from sources other than title IV, HEA program funds (see section 487(d) of the HEA).

• Expanding the information that institutions must make available to prospective and enrolled students to include information on: The employment and placement of students, the retention rates of first-time, full-time undergraduate students, and completion and graduation rate data that is disaggregated by gender, race, and grant or loan assistance (see section 485(a) of the HEA).

• Establishing requirements for institutions that maintain on-campus housing facilities to publish annually a fire safety report, maintain a fire log, and report fire statistics to the Department (see section 485(i) of the HEA).

• Requiring institutions that provide on-campus housing facilities to develop and make available a missing student notification policy and allow students who reside on campus to confidentially register contact information (see section 485(j) of the HEA).

• Expanding the list of crimes that institutions must include in the hate crimes statistics reported to the Department (see section 485(f) of the HEA).

• Requiring institutions to include in the annual security report a statement of emergency response and evacuation procedures (see section 485(f) of the HEA).

• Expanding the eligibility for Federal Pell Grant, FWS, and FSEOG Program funds to students with intellectual disabilities (see sections 484(s) and 760 of the HEA).

• Establishing requirements under which an institution must readmit servicemembers to the same academic status they had when they last attended the institution (see section 484C of the HEA).

• Providing that an institution that conducts a teach-out at a site of a closed institution may, under certain conditions, establish that site as an additional location (see sections 487(f) and 498 of the HEA).

• Amending the definition of ''proprietary institution of higher education'' to include institutions that provide a program leading to a baccalaureate degree in liberal arts, if the institution provided that program since January 1, 2009, and has been accredited by a regional accrediting agency since October 1, 2007, or earlier (see section 102(b)(1)(A) of the HEA).

• Providing that an institution must certify that it has plans to effectively combat unauthorized distribution of copyrighted material and will offer alternatives to illegal downloading or peer-to-peer distribution of intellectual

property (see sections 485(a)(1) and 487(a) of the HEA).

• Expanding the information that an institution must make available to prospective and enrolled students to include a description of any plans the institution has to improve its academic program (see section 485(a) of the HEA).

• Providing that the non-Federal share of student grants or work-study jobs under the LEAP Program must be State funds and that the non-Federal share no longer has to come from a direct appropriation of State funds (see section 415C(b)(10) of the HEA).

• Requiring the State program to notify students that grants are LEAP Grants that are funded by the Federal Government, the State, and for LEAP Grants to students under the new Grants for Access and Persistence (GAP) Program, other contributing partners (see section 415C(b) of the HEA).

• Establishing the activities, awards, allotments to States, matching funds requirements, consumer information requirements, application requirements, and other requirements needed to begin and continue participating in the GAP Program (see sections 415B and 415E of the HEA).

Significant Proposed Regulations

We group major issues according to subject, with appropriate sections of the proposed regulations referenced in parentheses. We discuss other substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Part 600 Institutional Eligibility Under the Higher Education Act of 1965, as Amended

Definition of Baccalaureate Liberal Arts Programs Offered by Proprietary Institutions (§ 600.5)

Statute: Effective July 1, 2010, the HEOA amends the definition of *proprietary institution of higher education* in section 102(b)(1)(A) of the HEA to include an institution that provides a program leading to a baccalaureate degree in liberal arts that the institution has provided since January 1, 2009, so long as the institution has been accredited by a recognized regional accreditation agency or organization since October 1, 2007, or earlier. As the language in section 102(b)(1)(A)(i) of the HEA is not new, this change does not affect the eligibility of current programs or alter the method used by the Department in determining that a program of training prepares students for gainful employment in a recognized occupation.

Current Regulations: Section 600.5(a)(5) defines a *proprietary institution of higher education* as one that provides an eligible program of training, defined in § 668.8, to prepare students for gainful employment in a recognized occupation.

Proposed Regulations: The proposed change to § 600.5(a)(5) would add to the definition of *proprietary institution of higher education,* an institution that provides a program leading to a baccalaureate degree in liberal arts that the institution has provided since January 1, 2009, so long as the institution has been accredited by a recognized regional accreditation agency or organization since October 1, 2007, or earlier. In addition, a new paragraph (e) would be added to § 600.5 to include a definition of a *program leading to a baccalaureate degree in liberal arts.* The definition would require that the institution's recognized regional accreditation agency or organization determine that the program is a general instructional program in the liberal arts subjects, the humanities disciplines, or the general curriculum, falling within one or more generally accepted instructional categories comprising such programs, but including only instruction in regular programs, and excluding independently designed programs, individualized programs, and unstructured studies. The generally accepted instructional categories would be:

• A program that is a structured combination of the arts, biological and physical sciences, social sciences, and humanities, emphasizing breadth of study;

• An undifferentiated program that includes instruction in the general arts or general science;

• A program that focuses on combined studies and research in the humanities subjects as distinguished from the social and physical sciences, emphasizing languages, literatures, art, music, philosophy and religion; and

• Any single instructional program in liberal arts and sciences, general studies and humanities not listed above.

Reasons: The regulations are amended to reflect the changes made by the HEOA. The regulations would require that an institution's accrediting agency determine that a program is a liberal arts program as defined in this section in order to ensure that a program meets a generally accepted standard for liberal arts programs. The proposed definition of a *program leading to a baccalaureate degree in liberal arts* is from the U.S. Department of Education's National Center for Education Statistics' (NCES) Classification of Instructional Programs (CIP), the Federal government statistical standard on instructional program classifications. Specifically, the instructional categories are from the description of CIP 24, Liberal Arts and Sciences, General Studies, and Humanities, which would ensure that a program meets a generally accepted standard for liberal arts programs. The definition excludes independently-designed programs, individualized programs, and unstructured studies as the Department believes that, to meet the statutory requirement that an institution offer a program, it must be an organized program of study that is essentially the same for all students, except that it could include some elective courses.

Institutional Requirements for Teach-Outs and Eligibility and Certification Procedures (§§ 600.2, 600.32, 668.14)

Statute: The HEOA added paragraph (f) to section 487 of the HEA to provide that, whenever the Department initiates an action to limit, suspend, or terminate (LS&T) an institution's participation in any Title IV program or initiates an emergency action against an institution, the institution must prepare a teach-out plan for submission to its accrediting agency. The teach-out plan must be prepared in accordance with section 496(c)(6) of the HEA (mistakenly cited as section 496(c)(4) in the HEA) and any applicable title IV, HEA program regulations or accrediting agency standards. A *teach-out plan* is defined as a written plan that provides for equitable treatment of students if an institution ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency, a teach-out agreement.

The HEOA also added section 498(k) of the HEA to provide that a location of a closed institution is eligible as an additional location of another institution for the purpose of conducting a teach-out if the teach-out is approved by the institution's accrediting agency. The institution that conducts the teach-out under this provision is permitted to establish a permanent additional location at the closed institution without having to satisfy the requirements for additional locations in sections 102(b)(1)(E) and 102(c)(1))(C) of the HEA—*i.e.,* that a proprietary institution or a postsecondary vocational institution must have been in existence for two years to be eligible—and without assuming the liabilities of the closed institution.

One of the four new accrediting agency operating procedures added by the HEOA as section 496(c)(3) of the HEA requires accrediting agencies to approve teach-out plans submitted by institutions they accredit if the Department notifies the agency of an action against an institution in accordance with section 487(f) of the HEA, if the institution's accreditation is withdrawn, terminated or suspended, or if the institution intends to cease operations. This provision was negotiated by Team III—Accreditation and will be reflected in the NPRM developed to implement accreditation issues (Docket ID ED–2009–OPE–). Because of the overlap in these three provisions, the development of proposed regulatory language was coordinated between the two negotiating committees.

Current Regulations: Section 600.32 provides that an additional location is eligible to participate in the title IV, HEA programs if it meets the requirements for institutional eligibility in (1) § 600.4 (eligibility requirements for an institution of higher education), § 600.5 (eligibility requirements for a proprietary institution), or § 600.6 (eligibility requirements for a postsecondary vocational institution); (2) § 600.8 (treatment of a branch campus), and (3) § 600.10 (date, extent, duration, and consequences of eligibility). However, to qualify as an eligible additional location, a location is not required to have been in existence for two years unless (1) the location was a facility of another institution that has closed or ceased to provide educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution or the institution's students; (2) the applicant institution acquired, either directly from the institution that closed or ceased to provide educational programs, or through an intermediary, the assets at the location; and (3) the institution from which the applicant institution acquired the assets of the location owes a liability for a violation of an HEA program requirement and is not making payments in accordance with an agreement to repay that liability. An additional location that must meet the two-year rule for these reasons, nevertheless, is exempt from the two-year rule if it agrees (1) to be liable for all improperly expended or unspent title IV program funds received by the institution that has closed or ceased to provide educational programs; (2) to be liable for all unpaid refunds owed to students who received title IV program funds; and (3) to abide by the policy of the institution that has closed or ceased to provide educational programs regarding refunds of institutional charges to students in effect before the date of the acquisition of the assets of the additional location for the students who were enrolled before that date.

Proposed Regulations: Section 600.2 would define a *teach-out plan* as a written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides 100 percent of at least one program, ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency, a teach-out agreement between institutions.

Section 668.14 would be amended to include in the program participation agreement the requirement in section 487(f) of the HEA. In addition to requiring an institution to submit a teach-out plan to its accrediting agency whenever the Department initiates an LS&T, or an emergency action against the institution, as required by statute, proposed § 668.14(b)(31) would require an institution to submit a teach-out plan when (1) the institution's accrediting agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation of the institution; (2) the institution's State licensing or authorizing agency revokes the institution's license or legal authorization to provide an educational program; (3) the institution intends to close a location that provides 100 percent of at least one program; or (4) the institution otherwise intends to cease operations.

Proposed § 600.32(d) would implement section 498(k) of the HEA to provide that an institution that conducts a teach-out for a closed institution whenever the Department initiates an LS&T, or an emergency action against the institution, may apply to have that site approved as an additional location, if the teach-out plan was approved by the closed institution's accrediting agency. If the Department approves the institution to add the additional location, the ''two-year rule'' would not apply to the additional location. In addition, the institution would not assume the liabilities of the closed institution, and the institution would not assume the cohort default rate of the closed institution, provided the institutions are not related parties and there is no commonality of ownership or management between the institutions, as described in proposed 34 CFR 668.188(b) and 34 CFR 668.207(b) (these sections address the determination of cohort default rates for institutions that have undergone a change in status). An institution that accepts responsibility for conducting a teach-out of students under such an arrangement would still have to comply with § 600.32(c)(3), which requires the additional location to abide by the policy of the institution that has closed or ceased to provide educational programs regarding refunds of institutional charges to students in effect before the date of the acquisition of the assets of the additional location for the students who were enrolled before that date. As a condition for approval of the additional location, the Department may require that payments from the institution conducting the teach-out to the owners of the closed institution, or related parties, be used to pay any liabilities owed by the closed institution.

Reasons: The regulations are amended to reflect the changes made by the HEOA.

In proposed § 668.14(b)(31), the circumstances under which an institution would be required to submit a teach-out plan to its accrediting agency would be expanded beyond the circumstances listed in the statute to specifically address other situations where the Department believes the potential closure will put significant numbers of students at risk of being unable to complete their program, including the closure of a location that provides 100 percent of at least one program. This list of circumstances would conform with proposed changes in §§ 602.3 and 602.24 of the Team III—Accreditation NPRM (Docket ID ED–2009–OPE–) for implementing section 496(c)(3) of the HEA, which directs accrediting agencies to require institutions to submit a teach-out plan for approval upon the occurrence of certain events. As a result, the definition of a *teach-out plan* would apply to an institutional location that provides 100 percent of at least one program, and would be the same definition used in 34 CFR part 602 for the Secretary's Recognition of Accrediting Agencies.

Proposed § 600.32(d) would be consistent with statutory intent to encourage an institution to conduct a teach-out of a closed institution and our view that the cohort default rate of a closed institution could be a potential impediment that could dissuade another institution from conducting the teach-out if its default rate would be adversely affected by the closed institution's default rate. However, the proposed regulations would ensure that this provision is not used by an owner to circumvent an undesirable cohort

default rate or liabilities for one institution by having it become an additional location of another institution under the same, or related, ownership. Preserving the Department's right to require that payments from the institution conducting the teach-out to the owners of the closed institution, or related parties, be used to pay any liabilities owed by the closed institution, provides the benefit to the institution that conducts the teach-out of not assuming any liabilities owed by the closed school, while ensuring that any funds paid to the owners of the closed school are applied against any title IV program liabilities owed by that institution.

No changes are proposed to the applicability of § 600.32(c)—that the institution opening the additional location must continue to apply the refund policy for the students from the institution that has closed or ceased to provide educational programs. This obligation to protect the students by keeping the same refund policy in place continues because it is different from the pre-existing liabilities that the institution is not required to assume under this provision.

Some non-Federal negotiators felt that, in keeping with proposed 34 CFR 668.14(b)(31), proposed § 600.32(d) should be expanded to allow the exemptions from the two-year rule, the assumption of liabilities, and the assumption of the cohort default rate, to apply when an institution conducts a teach-out at an institution that closes for reasons other than those listed in section 498(k) of the HEA—*i.e.*, the initiation of a limitation, suspension, or termination of the institution, or an emergency action against the institution by the Department. The Department would limit the availability of this procedure (allowing an institution to conduct a teach-out of a closed institution without the imposition of customary restrictions to discourage institutions not subject to an LS&T, or emergency action from arranging a closure and sale of the institution) without liabilities in situations where a buyer would otherwise purchase the institution and assume the institution's liabilities under existing change of ownership rules.

Part 668 Student Assistance General Provisions

Readmission Requirements for Servicemembers (§ 668.18)

Statute: The HEOA added new section 484C to the HEA to address institutional readmission requirements for servicemembers. Section 484C of the HEA provides that an institution of higher education may not deny readmission to a servicemember of the uniformed services for reasons relating to that service. In addition, a student who is readmitted to an institution under this section must be readmitted with the same academic status as the student had when he or she last attended the institution. An affected servicemember is any individual who is a member of, applies to be a member of, or performs, has performed, applies to perform, or has the obligation to perform, service in the uniformed services. This requirement applies to service in the uniformed services, whether voluntary or involuntary, on active duty in the Armed Forces, including service as a member of the National Guard or Reserve, for a period of more than 30 days under a call or order to active duty of more than 30 days.

Any student whose absence from an institution of higher education is necessitated by reason of service in the uniformed services is entitled to readmission if:

- The student (or an appropriate officer of the Armed Forces or official of the Department of Defense) gives advance written or verbal notice of such service to the appropriate official at the institution;
- The cumulative length of the absence and of all previous absences from that institution of higher education by reason of service in the uniformed services does not exceed five years; and
- Except as otherwise provided in this section, the student submits a notification of intent to reenroll in the institution.

However, no advance notice by the student is required if the giving of such notice is precluded by military necessity, such as a mission, operation, exercise, or requirement that is classified; or a pending or ongoing mission, operation, exercise, or requirement that may be compromised or otherwise adversely affected by public knowledge. In addition, any student (or an appropriate officer of the Armed Forces or official of the Department of Defense) who did not give advance notice of service to the appropriate official at the institution may meet the notice requirement by submitting, at the time the student seeks readmission, an attestation to the student's institution that the student performed service in the uniformed services that necessitated the student's absence from the institution.

When determining the cumulative length of the student's absence for service, the period of service does not include any service:

- That is required, beyond five years, to complete an initial period of obligated service;
- During which the student was unable to obtain orders releasing the student from a period of service in the uniformed services before the expiration of the five-year period and the inability to obtain those orders was through no fault of the student; or
- That is performed by a member of the Armed Forces (including the National Guard and Reserves) who is—
  - Ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12302, 12304, or 12305 of Title 10, U.S.C., or under section 331, 332, 359, 360, 367, or 712 of Title 14, U.S.C.;
  - Ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress;
  - Ordered to active duty (other than for training) in support of an operational mission for which personnel have been ordered to active duty under section 12304 of Title 10, U.S.C.;
  - Odered to active duty in support of a critical mission or requirement of the Armed Forces (including the National Guard or Reserve); or
  - Called into Federal service as a member of the National Guard under chapter 15 of Title 10, U.S.C., or section 12406 of Title 10, U.S.C.

An affected servicemember must, upon the completion of a period of service in the uniformed services, notify the institution of his or her intent to return to the institution not later than three years after the completion of the period of service. However, a student who is hospitalized for or convalescing from an illness or injury incurred in or aggravated during the performance of service in the uniformed services must notify the institution of his or her intent to return to the institution not later than two years after the end of the period that is necessary for recovery from such illness or injury. A student who fails to apply for readmission within the required period does not automatically forfeit eligibility for readmission to the institution, but is subject to the institution's established leave of absence policy and general practices.

A student who submits an application for readmission to an institution must provide to the institution documentation to establish that:

- The student has not exceeded the specified service limitations; and
- The student's eligibility for readmission has not been terminated.

An institution may not delay or attempt to avoid a readmission of a student under this section by demanding documentation that does not exist, or is not readily available, at the time of readmission.

A student's eligibility for readmission to an institution under this section by reason of such student's service in the uniformed services terminates upon the occurrence of any of the following events:

- A separation of such person from the Armed Forces (including the National Guard and reserves) with a dishonorable or bad conduct discharge;
- A dismissal of such person permitted under section 1161(a) of Title 10, U.S.C.; or
- A dropping of such person from the rolls pursuant to section 1161(b) of Title 10, U.S.C.

Current Regulations: None.

Proposed Regulations:

General

Section 668.18(a) would include the general requirements of the statute that an institution may not deny readmission to a servicemember, but must readmit the servicemember with the same academic status as the student had when the student was last admitted to the institution. The proposed regulations would clarify that the requirements of this section also apply to a student who was admitted to an institution, but did not begin attendance because of service in the uniformed services. The proposed regulations would specify that the institution must promptly readmit a student, and would define ''promptly readmit'' as readmitting a student into the next class or classes in the student's program unless the student requests a later date of admission, or unusual circumstances require the institution to admit the student at a later date.

Section 668.18(a)(2)(iii) would specify that to readmit a person with the ''same academic status'' means that the institution admits the student:

- To the same program to which he or she was last admitted by the institution or, if that program is no longer offered, the program that is most similar, unless the student requests or agrees to admission to a different program;
- At the same enrollment status that the student last held at the institution, unless the student requests or agrees to admission at a different enrollment status;
- With the same number of credit hours or clock hours completed previously by the student, unless the student is readmitted to a different program to which the completed credit hours or clock hours are not transferable;
- With the same academic standing (*e.g.,* with the same satisfactory academic progress status) the student previously had;
- If the student is readmitted to the same program, for the first academic year in which the student returns, by assessing the same institutional charges that the student was or would have been assessed for the academic year during which the student left the institution;
- If the student is admitted to a different program, and for subsequent academic years for a student admitted to the same program, by assessing no more than the institutional charges that other students in the program are assessed for that academic year; and
- Waiving charges for equipment required in lieu of equipment the student paid for when the student was previously enrolled.

In the case of a student who is not prepared to resume the program at the point where he or she left off or will not be able to complete the program, § 668.18(a)(2)(iv) would require the institution to make reasonable efforts to help the student become prepared or to enable the student to complete the program including, but not limited to, providing refresher courses at no extra cost and allowing the student to retake a pretest at no extra cost. The institution would not be required to readmit the student if, after reasonable efforts by the institution, the student is still not prepared to resume the program at the point where he or she left off, or is still unable to complete the program. In addition, an institution would not be required to readmit a student if there are no reasonable efforts the institution can take to prepare the student to resume the program, or to enable the student to complete the program.

The proposed regulations would define ''reasonable efforts'' as actions that do not place an undue hardship on the institution. An ''undue hardship'' would be defined as requiring significant difficulty or expense to the institution. An institution would carry the burden to prove by a preponderance of the evidence that the student is not prepared to resume the program with the same academic status at the point where the student left off, or that the student will not be able to complete the program.

Section 668.18(a)(3) would make clear that the requirements of this section apply to an institution even if that institution has undergone a change of ownership since the student ceased attendance.

Finally, § 668.18(a)(4) would make clear that the provisions of this section supersede any State law or other requirement that reduce, limit, or eliminate any right or benefit provided by this section.

Service in the Uniformed Services

Section 668.18(b) would delineate what service in the uniformed services means for purposes of this section. This section would expand upon the statutory language to clarify that service in the uniformed services includes active duty for training and full-time National Guard duty under Federal authority (*i.e.,* not National Guard service under authority of State law). In addition, the regulations would specify that qualifying service must be for more than 30 *consecutive* days under a call or order to active duty of more than 30 *consecutive* days.

Readmission Procedures

Section 668.18(c) would list the statutory conditions under which an institution must readmit a servicemember. In addition, § 668.18(c)(2)(i) would require an institution to designate one or more offices for the purpose of receiving advance notice from students of their absence from the institution necessitated by service in the uniformed services, and notice from students of an intent to return to the institution. Section 668.18(c)(1)(i) would make clear that advance notice must be provided by the student as far in advance as is reasonable under the circumstances. However under § 668.18(c)(2)(ii) and (iii), such notice would not need to follow any particular format, nor would a student have to indicate as part of the notice whether the student intends to return to the institution. Also, the regulations would make clear that an institution may not set a brightline deadline for submission of any such notice, but must judge the timeliness of submission by the facts of a particular case. As such notice may be provided by an appropriate officer of the Armed Forces, § 668.18(c)(2)(iv) would clarify who an ''appropriate officer'' is. The regulations would also provide that a student's notice of intent to return may be provided orally or in writing and would not need to follow any particular format. Section 668.18(c)(1)(ii) would make clear that the cumulative length of all previous absences by an affected student from the institution would include only the time the student spends actually performing service in the uniformed services. A period of absence from the institution before or after performing service in the

uniformed services would not count against the five year limit. For example, after the individual completes a period of service in the uniformed services, he or she is provided a certain amount of time to return to the institution. The period between completing the uniformed service and returning to the institution would not count against the five-year limit.

Exceptions to Advance Notice

Section 668.18(d) would restate the statutory language for exceptions to advance notice.

Cumulative Length of Absence

Section 668.18(e) would restate the statutory types of service that are not included in the cumulative length of the student's absence, including a brief description of the types of services referenced in titles 10 and 14 of the United States Code.

Notification of Intent to Reenroll

Section 668.18(f) would restate the statutory provision providing that a student who fails to apply for readmission within the required periods does not automatically forfeit eligibility for readmission to the institution, but is subject to the institution's established leave of absence policy and general practices.

Documentation

Section 668.18(g) would list the documentation required by the statute that a student must submit with an application for readmission. The regulations would list several specific types of documentation that satisfy the statutory documentation requirements, making clear that the types of documentation available or necessary will vary from case to case.

Termination of Readmission Eligibility

Section 668.18(h) would list the circumstances listed in the statute under which a student's eligibility for readmission to an institution would be terminated, including a brief description of the types of circumstances referenced in title 10 of the United States Code.

Reasons: The regulations are amended to reflect the changes made by the HEOA. The statutory provisions for readmission of servicemembers to institutions of higher education were based on the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA) (38 U.S.C. 4301–4334), which established the process for servicemembers to return to employment after serving on active duty. Therefore, in developing these proposed regulations, the Department sought to be as consistent as possible with the regulations implementing the USERRA. The Department believes that the purpose of these provisions, as with the USERRA, is to minimize the disruption to the lives of persons performing service in the uniformed services, allowing a student to return to an institution without penalty for having left because of service in the uniformed services.

General

Because the statute refers to ''readmission'' of servicemembers, the Department believes that the statute was intended to apply not just to a student who began attendance at an institution and left because of service in the uniformed services, but also to a student who was admitted to an institution, but did not begin attendance because of service in the uniformed services.

In line with the goal of minimizing the disruption to the lives of persons performing service in the uniformed services and to prevent an institution from unduly delaying an individual's readmission, the proposed regulations would require an institution to promptly readmit a student, and would define ''promptly readmit'' as readmitting a student into the next class or classes in the student's program unless the student requests a later date of admission, or unusual circumstances require the institution to admit the student at a later date. If, for example, an institution must make efforts to help the student become prepared to resume the program, and such efforts would not be completed in time for the student to begin the next class, a later date of admission would be justified.

The proposed requirements in § 668.18(a)(2)(iii) for readmitting a person with the ''same academic status'' are consistent with USERRA regulations (20 CFR 1002.191 and 1002.192), which require an employer to employ a returning servicemember in the same position he or she left, so as to not penalize the individual for having left to serve in the uniformed services. The Department has chosen to focus only on the readmission of a servicemember by requiring that, if the student is readmitted to the same program, for the first academic year in which the student returns, the institution would have to assess the same institutional charges that the student had or would have been assessed for the academic year during which the student left the institution. However, this protection would not apply to subsequent years, when the institution could assess the institutional charges that other students in the program are assessed for that academic year.

To address concerns voiced by non-Federal negotiators that the regulations would not allow an institution to readmit a student with a different academic status, even if the student wanted the change, the regulations would make clear that the institution may admit the student with a different academic status if the student requests or agrees to the change.

Consistent with USERRA regulations (20 CFR 1002.198) which require an employer to make reasonable efforts, if necessary, to help an employee become qualified for the reemployment position, § 668.18(a)(2)(iv) would require the institution to make reasonable efforts, if necessary, to help a returning student become prepared or to enable the student to complete the program including, but not limited to, providing refresher courses at no extra cost and allowing the student to retake a pretest at no extra cost. The Department believes requiring an institution to make such an effort is in line with the goal of allowing a student to return to an institution without penalty for having left because of service in the uniformed services. To ensure that such an effort does not unduly burden the institution financially or administratively, the proposed regulations would use the USERRA regulations definitions of ''reasonable efforts''—actions that do not place an undue hardship on the institution and ''undue hardship''—requiring significant difficulty or expense to the institution.

In addition, as USERRA regulations (20 CFR 1002.139) provide an employer with a degree of flexibility in meeting its reemployment obligations by not requiring an employer to reemploy an individual under very limited circumstances, so would § 668.18(a)(2)(iv)(B) provide institutions with some flexibility to not readmit a student if, (1) after reasonable efforts by the institution, the student is still not prepared to resume the program at the point where he or she left off, or is still unable to complete the program; or (2) if there are no reasonable efforts the institution can take to prepare the student to resume the program, or to enable the student to complete the program. Consistent with USERRA regulations (20 CFR 1002.139), an institution would carry the burden to prove by a preponderance of the evidence that the student is not prepared to resume the program with the same academic status at the point where the student left off, or that the student will not be able to complete the program.

Consistent with the Department's practice of treating an institution that has undergone a change of ownership as the same institution, § 668.18(a)(3) provides that the requirements of this section would apply to an institution even if that institution has undergone a change of ownership since the student ceased attendance.

As with USERRA regulations (20 CFR 1002.7(b)), § 668.18(a)(4) would make clear that the provisions of this section supersede any State law or other requirement that reduces, limits, or eliminates any right or benefit provided by this section. This provision would make it possible, for example, to readmit a servicemember into a class for a semester even if that class was at the maximum enrollment level set by the institution's State. The preemption only applies when it is the admission of the returning servicemember that would be prevented by the State law or other requirement. The institution is expected to take other steps to come into compliance with the State law or other requirements for future periods of enrollment. As with USERRA regulations, these regulations would not supersede, nullify or diminish any Federal or State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that establishes an individual's right or benefit that is more beneficial than, or is in addition to, a right or benefit provided under the HEA.

Service in the Uniformed Services

Section 668.18(b) clarifies that service in the uniformed services includes active duty for training, because it is a form of active duty in the Armed Forces. Consistent with USERRA regulations (20 CFR 1002.57), service in the uniformed services would include full-time National Guard duty under Federal authority, but not National Guard service under authority of State law, which is not considered to be service in the uniformed services for purposes of these provisions. As explained in 20 CFR 1002.57 of the USERRA regulations:

> The National Guard has a dual status. It is a Reserve component of the Army, or, in the case of the Air National Guard, of the Air Force. Simultaneously, it is a State military force subject to call-up by the State Governor for duty not subject to Federal control, such as emergency duty in cases of floods or riots. National Guard members may perform service under either Federal or State authority, but only Federal National Guard service is covered by USERRA.

In addition, the regulations would specify that qualifying service must be for more than 30 *consecutive* days under a call or order to active duty of more than 30 *consecutive* days. This would exclude shorter periods of Reserve and National Guard service from being added together to trigger this provision.

Readmission Procedures

Section 668.18(c) would list the statutory conditions under which an institution must readmit a servicemember. An institution would be required to designate one or more offices for the purpose of receiving advance notice from students of their absence from the institution necessitated by service in the uniformed services, and notice from students of an intent to return to the institution to ease administrative burden for institutions and to assist students in directing their notice to the appropriate individuals.

Also, consistent with USERRA regulations (20 CFR 1002.85), to ease administrative burden for institutions, a student would have to provide notice that he or she is leaving as far in advance as is reasonable under the circumstances. However, also consistent with USERRA regulations (20 CFR 1002.85 and 1002.88), to ensure that a student's advance notice is not subject to unreasonable requirements by an institution: (1) Such notice would not need to follow any particular format; (2) an institution would have to judge the timeliness of submission by the facts of a particular case; and (3) a student would not have to indicate as part of the notice whether the student intends to return to the institution. For the same reason, the regulations would also provide that a student's notice of intent to return may be provided orally or in writing and would not need to follow any particular format (consistent with USERRA regulations section 1002.118).

Consistent with USERRA regulations (20 CFR 1002.100), § 668.18(c)(1)(ii) would make clear that the cumulative length of all previous absences by an affected student from the institution would include only the time the student spends actually performing service in the uniformed services. This means that the time a servicemember spent away from the institution either before, after, or in-between periods of service in the uniformed services does not count toward the maximum amount of time the servicemember may spend in active service before losing the protections in this provision.

Documentation

The list of specific types of documentation was included to assist students and institutions in identifying documents that satisfy the statutory documentation requirements.

Non-Title IV Revenue Requirement (90/10)

Institutional Eligibility and Sanctions (§§ 668.14(b)(16), 668.28(c), and 668.13(c))

Statute: The HEOA moved the requirement that a proprietary institution derive at least 10 percent of its revenue from sources other than title IV, HEA program funds from the institutional eligibility provisions in section 102(b) of the HEA to the general provisions in section 487(d) of the HEA. As a result, a proprietary institution that does not satisfy the 90/10 revenue requirement for a fiscal year, no longer loses its eligibility to participate in the title IV, HEA programs. Instead, as provided in section 487(d)(2) of the HEA, the institution's participation becomes provisional for two fiscal years. If the institution does not satisfy the 90/10 revenue requirement for two consecutive fiscal years, it loses its eligibility to participate in the title IV, HEA programs for at least two fiscal years.

During the two fiscal years the institution is provisionally certified because it failed to satisfy the 90/10 revenue requirement for a fiscal year, the institution's provisional certification terminates on the expiration date of its program participation agreement or the date it loses its eligibility to participate because it failed to satisfy the requirement for two consecutive fiscal years. To regain eligibility, the institution must demonstrate that it complied with all eligibility and certification requirements under section 498 of the HEA for a minimum of two fiscal years after the fiscal year it became ineligible.

Current Regulations: The regulations in 34 CFR 600.5(a)(8), (e), (f), and (g), identify the requirements for, and consequences of failing, the 90/10 revenue provision.

Proposed Regulations: In general, the proposed regulations would remove all of the 90/10 revenue provisions from 34 CFR 600.5 and relocate those provisions, as amended by the HEOA, to subpart B of part 668. Accordingly, proposed § 668.14(b)(16) would amend the program participation agreement to specify that a proprietary institution must derive at least 10 percent of its revenue for each fiscal year from sources other than title IV, HEA program funds. If an institution does not satisfy the 90/10 requirement, the proposed regulations in § 668.28(c) would incorporate the statutory consequences and require the institution to notify the Secretary no later than 45 days after the end of its

fiscal year that it failed the 90/10 requirement. Also, and in keeping with the provisional certification requirement in the statute, § 668.13(c) would be amended by adding proposed paragraph (1)(ii) to provide that a proprietary institution's certification automatically becomes provisional if it fails the 90/10 requirement for any fiscal year.

Reasons: The proposed regulations reflect the statutory requirements. The provision under which an institution would notify the Department that it failed the 90/10 requirement no later than 45 after its fiscal year, parallels, but would shorten, the current 90-day timeframe in 34 CFR 600.5(f). An institution at risk of failing the 90/10 requirement is expected to monitor its revenue sources and amounts carefully throughout the year, and is expected to know if it failed shortly after the end of its fiscal year. Consequently, we believe that 45 days provides ample time for the institution to confirm on-going assessments of its compliance with this requirement.

Calculating the Revenue Percentage (§ 668.28(a))

Statute: Section 487(d) of the HEA prescribes the requirements that proprietary institutions must follow in calculating their 90/10 revenue percentage. Under these requirements, an institution must—

(1) Use the cash basis of accounting, except for certain loans made by the institution;

(2) Consider as revenue only those funds generated by the institution from:

- Tuition, fees, and other institutional charges for students enrolled in eligible programs.
- Activities conducted by the institution that are necessary for the education and training of the institution's students, if those activities are conducted on campus or at a facility under the control of the institution, are performed under the supervision of a member of the institution's faculty, and are required to be performed by all students in a specific educational program at the institution.
- Funds paid by a student, or on behalf of a student by a party other than the institution, for an education or training program that is not eligible for title IV, HEA program funds, if the program is approved or licensed by the appropriate State agency, is accredited by an accrediting agency recognized by the Department, or provides an industry-recognized credential or certification;

(3) Presume that any title IV, HEA program funds are disbursed or delivered to or on behalf of a student will be used to pay the student's tuition, fees, or other institutional charges, regardless of whether the institution credits those funds to the student's account or pays those funds directly to the student, except to the extent that the student's tuition, fees, or other institutional charges are satisfied by:

- Grant funds provided by non-Federal public agencies or private sources independent of the institution;
- Funds provided under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals who are in need of that training;
- Funds used by a student from savings plans for educational expenses established by or on behalf of the student and which qualify for special tax treatment under the Internal Revenue Code of 1986; or
- Institutional scholarships.

(4) Include institutional aid as revenue to the school only as follows:

- For loans made by the institution on or after July 1, 2008 and prior to July 1, 2012, the net present value (NPV) of those loans made by the institution during the applicable institutional fiscal year accounted for on an accrual basis and estimated in accordance with generally accepted accounting principles and related standards and guidance, if the loans are bona fide as evidenced by enforceable promissory notes; are issued at intervals related to the institution's enrollment periods; and are subject to regular loan repayments and collections.
- For loans made by the institution on or after July 1, 2012, only the amount of loan repayments received during the applicable institutional fiscal year, excluding repayments on loans made and accounted for which the NPV was used.
- For scholarships provided by the institution, only those scholarships provided by the institution in the form of monetary aid or tuition discounts based upon the academic achievements or financial need of students, disbursed during each fiscal year from an established restricted account, and only to the extent that funds in that account represent designated funds from an outside source or from income earned on those funds.

(5) For each student who receives a loan on or after July 1, 2008, and prior to July 1, 2011, that is authorized under section 428H of the HEA or that is a Federal Direct Unsubsidized Stafford Loan, treat as revenue received by the institution from sources other than funds received under this title, the amount by which the disbursement of the loan received by the institution exceeds the limit on such loan in effect on the day before the date of enactment of the Ensuring Continued Access to Student Loans Act (ECASLA) of 2008; and

(6) Exclude from revenues—

- The amount of funds the institution received under part C (Federal Work Study), unless the institution used those funds to pay a student's institutional charges.
- The amount of funds the institution received under subpart 4 of part A (LEAP, SLEAP, or GAP).
- The amount of funds provided by the institution as matching funds for a title IV, HEA program.
- The amount of title IV, HEA program funds provided by the institution that are required to be refunded or returned.
- The amount charged for books, supplies, and equipment, unless the institution includes that amount as tuition, fees, or other institutional charges.

Current regulations: The regulations in 34 CFR 600.5 address many, but not all, of the statutory requirements for calculating the 90/10 revenue percentage. However, as discussed previously, the regulations in this section would be removed.

Section 668.23(d)(4) requires a proprietary institution to report its 90/10 ratio in a footnote to its audited financial statements.

Proposed regulations: Proposed § 668.28(a) incorporates the statutory requirements.

We propose to implement the statutory provision relating to counting revenue from non-title IV eligible programs by providing that these programs may prepare students to take an examination for an industry-recognized credential or certificate issued by an independent third-party, provide training needed for students to maintain State licensing requirements, or provide additional training for practitioners.

An institution would continue to report the revenue percentages in a footnote to its audited financial statements, but the revisions in proposed § 668.23(d)(4) would require the institution to identify in that footnote the non-Federal and Federal revenues by category.

With regard to institutional loans for which an NPV would be calculated, the proposed regulations establish that institutional loans would have to be credited in-full to the student's account, be evidenced by standalone repayment agreements between students and the institution, and be separate from

enrollment contracts signed by students. Loans made to students by third parties but subsequently acquired by the institution would not meet this definition of institutional loans, and could not be included in either of the NPV calculations. Moreover, all payments from the institution to acquire the loans would be counted against any non-Federal revenues from the loan proceeds the institution received.

For the purpose of counting revenue from loan funds in excess of the loan limits in effect prior to ECASLA, we propose that institutions count the excess amount on a payment-period basis.

Finally, in proposed appendix C to subpart B of part 668 we illustrate how an institution calculates its 90/10 revenue percentage.

Reasons: To a large extent, the proposed regulations adopt the statutory provisions which, also to a large extent, reflect current regulations and practice. However, we are incorporating suggestions from some of the non-Federal negotiators in implementing three of the new provisions for non-Federal sources of revenue that may be included in the 90/10 calculation. First, we would identify the types of non-title IV eligible programs from which an institution could count, as revenue, the funds paid for students taking those programs. We believe this eliminates much of the ambiguity regarding whether the revenue from a non-title IV eligible program offered by an institution could be counted for 90/10 purposes. Second, for purposes of the 90/10 calculation, we are identifying the elements that will distinguish an institutional loan from other types of student account receivables. Third, the regulations would allocate the excess loan funds that are treated as non-Federal revenue to each payment period to simplify the 90/10 calculation. This will minimize some complexities that may result if the excess funds were only counted after all of the pre-ECASLA loan funds were provided to a student, particularly if the disbursements for a loan are received by an institution in two different fiscal years.

An institution would continue to report its 90/10 ratio in a footnote included with the institution's annual audited financial statements. Given the additional revenues that may be counted as non-Federal funds in this calculation, and that Federal funds may be treated as non-Federal funds (i.e., loan amounts in excess of the pre-ECASLA limits), we believe it is necessary for the institution to report in that footnote the amounts of the revenues, by category, derived from Federal and non-Federal funds that are included in its 90/10 calculation. The certified public accountant that prepares the institution's audited financial statements will be required to review that information and test the institution's calculation. On a case by case basis, Department staff will continue to review the accountant's work papers when more information is needed to determine if the calculation is correct.

Some of the non-Federal negotiators suggested that the regulations permit tuition discounts given to students be counted for 90/10 purposes, since tuition discounts are mentioned in the HEA, along with monetary aid provided to students, as types of scholarships provided by a proprietary institution. The HEA also requires that these scholarships be disbursed to a student's account from an established restricted account at the institution holding funds from an outside source, or income earned on those funds. The proposed regulations implement the statutory provision that institutions may pay scholarships with tuition discounts that are credited from such restricted accounts.

Net Present Value (NPV) (§ 668.28(c))

Statute: For loans an institution makes to students on or after July 1, 2008 and prior to July 1, 2012, section 497(d)(1)(D)(i) of the HEA requires an institution to count as revenue the NPV of the loans it makes during a fiscal year.

Current regulations: There are no current regulations regarding NPV, however 34 CFR 600.5(d)(3)(i) allows an institution to count as revenue the amount of loan repayments it receives on institutional loans during its fiscal year.

Proposed regulations: In proposed § 668.28(b), the Department defines the NPV as the sum of the discounted cash flows $R^t/(1+i)^t$. The variable ''i'' is the discount rate, which would, for 90/10 purposes, be the most recent annual inflation rate. The variable ''t'' is the time or period of the cash flow, in years, starting from the time the loan entered repayment. The variable ''R^t'' is the net cash flow at time or period t.

If the institution's loans made during the fiscal year have substantially the same repayment period, the proposed regulations provide that an institution may use that repayment period for those loans to set the range of values of variable ''t'' in the NPV formula. However, if an institution's loans have different repayment periods, the institution would group the loans by repayment period and use the repayment period for each group to set the range of values for variable ''t''. For each group of loans, as applicable, the institution would multiply the total annual payments due on the loans by the institution's collection rate (the total amount of payments collected divided by the total amount of payments due). The resulting amount is the cash flow used for variable ''R'' in each period ''t'' for each group of loans for which an NPV is calculated. Proposed appendix C to subpart B of part 668 illustrates this NPV calculation.

As a simpler alternative to performing the NPV calculation, the proposed regulations allow an institution the option to use 50 percent of the total amount of loans it made during the fiscal year as the NPV. However, if the institution chooses to use this alternative, it may not sell any of the associated loans until they have been in repayment for at least two years.

Reasons: The Department would implement the statutory requirement to establish the net present value of an institution's loans by adopting the formula—NPV = sum of the discounted cash flows $R^t/(1+i)^t$. However, this formula is generally intended for, and used primarily, in making investment decisions. Nevertheless, the discount rate ''i'' is the rate of return that could be earned on an investment in the financial markets with similar risk, or more generally, the rate of return sought or expected by the investor. Translating this for 90/10 purposes, the formula determines the NPV of institutional loans by taking into consideration the discounted value caused by inflation.

The proposed regulations define the expected cash flows represented by variable ''R'' to be the annual payments due on the loans (i.e., the scheduled payments) multiplied by the institution's loan collection rate (the total amount of payments collected on loans for a fiscal year divided by the total amount of payments due on those loans for that year). In this way, the expected cash flows are adjusted to take into account loans that are not collected or loan payments that are not collected timely. The institution's loan collection rate should be based on the institution's own loan collection history, and may be a prior annual rate or historical rate covering several years. We seek public comment on other ways that an institution may establish a loan collections rate. In any case, the institution would need to document that rate and the institution's auditor would examine that information as a part of the institution's annual financial statement audit.

With regard to the alternative provision that allows an institution to use 50 percent of the total amount of loans it made during the fiscal year as the NPV, we propose this option as an administrative convenience for institutions that either prefer a simpler method to establish the NPV or who do not need the additional non-Federal revenues that might be counted if the formula were used. This option provides a conservative, simple calculation for the NPV that is intended to be a fair compromise in exchange for choosing not to perform the NPV calculations. However, if the institution chooses this option, it may not sell the loans associated with the 50 percent calculation until those loans have been in repayment for two years. As provided in section 487(d)(1)(D)(i)(III) of the HEA, institutional loans are subject to regular loan repayment and collections. The regular NPV formula would use the institution's own collection rate, but the alternative formula would not. To make sure that alternative formula institutional loans are legitimate, the institution may not sell them until they have been in repayment for two years. This will permit the Department, or another oversight entity, to determine whether these loans were subject to regular loan repayment and collection as required by the statute. Moreover, we wish to avoid an outcome where an institution would sell the loans in the short term for less than the 50 percent amount it claimed for 90/10 purposes.

Institutional Plans for Improving the Academic Program (§ 668.43(a))

Statute: As part of the required information on its academic program that an institution must make available to prospective and enrolled students under section 485(a) of the HEA, the HEOA adds the requirement that an institution make available any plans the institution has for improving that academic program.

Current Regulations: Section 668.43(a)(5) requires an institution to make readily available to enrolled and prospective students information on the academic program of the institution, including (1) the current degree programs and other educational and training programs; (2) the instructional, laboratory, and other physical facilities that relate to the academic program; and (3) the institution's faculty and other instructional personnel.

Proposed Regulations: Section 668.43(a)(5) would be amended to add to the information on the academic program of the institution that an institution must make readily available to enrolled and prospective students any plans by the institution for improving the academic program of the institution. An institution would be allowed to determine what a ''plan'' is, including when a plan becomes a plan.

Reasons: The regulations are amended to reflect the changes made by the HEOA.

Peer-to-Peer File Sharing and Copyrighted Material (§§ 668.14(b) and 668.43(a))

Statute: The HEOA added a new requirement to section 487 of the HEA (Program Participation Agreement) under which an institution must certify that it has developed plans to effectively combat the unauthorized distribution of copyrighted material (including through the use of a variety of technology-based deterrents) and will, to the extent practicable, offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property, as determined by the institution in consultation with the chief technology officer or other designated officer of the institution.

In addition, as part of the required information an institution must make available to prospective and enrolled students, the HEOA added new subparagraph (P) to section 485(a)(1) of the HEA to require a description of institutional policies and sanctions related to the unauthorized distribution of copyrighted material. This description includes (1) an annual disclosure that explicitly informs students that unauthorized distribution of copyrighted material, including peer-to-peer file sharing, may subject the students to civil and criminal liabilities; (2) a summary of the penalties for violation of Federal copyright laws; and (3) the institution's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in unauthorized distribution of copyrighted materials using the institution's information technology system.

Current Regulations: Section 668.41(c) requires an institution to provide to enrolled students an annual notice containing a list and brief description of the consumer information it must disclose and the procedures for obtaining this consumer information. The term *notice* is defined in § 668.41(a) as a means of notification of the availability of information an institution is required to disclose on a one-to-one basis through a direct individual notice to each enrolled student. This notice must be made through an appropriate mailing or publication, including direct mailing through the U.S. Postal Service, campus mail or electronic mail. Posting on Internet or Intranet Web sites does not constitute notice. If the institution discloses the consumer information listed in § 668.41(c) by posting the information on a Web site, it must include in the notice the exact electronic address at which the information is posted, and a statement that the institution will provide a paper copy of the information on request.

Section 668.41(a) defines a *prospective student* as an individual who has contacted an eligible institution requesting information concerning admission to that institution.

Proposed Regulations:

Program Participation Agreement (PPA)

Section 668.14(b)(30)(i) would implement section 487(a)(29)(A) of the HEA to require an institution, as a condition of participation in a title IV, HEA program, to agree that it has developed and implemented written plans to effectively combat the unauthorized distribution of copyrighted material by users of the institution's network without unduly interfering with the educational and research use of the network.

An institution would have to include in its plan:

- The use of one or more technology-based deterrents;
- Mechanisms for educating and informing its community about appropriate versus inappropriate use of copyrighted material. The written plan would include the information contained in proposed § 668.43(a)(10). These mechanisms could include any additional information and approaches determined by the institution to contribute to the effectiveness of the plan, such as including pertinent information in student handbooks, honor codes, and codes of conduct in addition to e-mail and/or paper disclosures.
- Procedures for handling unauthorized distribution of copyrighted material, including disciplinary procedures; and
- Procedures for periodically reviewing the effectiveness of the plans to combat the unauthorized distribution of copyrighted materials by users of the institution's network using relevant assessment criteria. It would be left to each institution to determine what relevant assessment criteria are.

The regulations would make clear that no particular technology measures are favored or required for inclusion in an institution's plans, and each institution retains the authority to determine what its particular plans for compliance will

be, including those that prohibit content monitoring.

Proposed § 668.14(b)(30)(ii) would implement section 487(a)(29)(B) of the HEA by requiring that an institution, in consultation with the chief technology officer or other designated officer of the institution, to the extent practicable, offer legal alternatives to illegal downloading or otherwise acquiring copyrighted material, as determined by the institution. The proposed regulations would also require that institutions (1) be required to periodically review the legal alternatives for downloading or otherwise acquiring copyrighted material and (2) make the results of the review available to their students through a Web site or other means.

Consumer Information

Proposed § 668.43(a)(10) would implement section 485(a)(1)(P) of the HEA. Information regarding institutional policies and sanctions related to the unauthorized distribution of copyrighted material would be included in the list of institutional information provided upon request to prospective and enrolled students. This information would be required to (1) explicitly inform its students that unauthorized distribution of copyrighted material, including peer-to-peer file sharing, may subject a student to civil and criminal liabilities; (2) include a summary of the penalties for violation of Federal copyright laws; and (3) describe the institution's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in illegal downloading or unauthorized distribution of copyrighted materials using the institution's information technology system. The Department will work with representatives of copyright holders and institutions to develop a summary of the civil and criminal penalties for violation of Federal copyright laws to include as part of the *Federal Student Aid Handbook* that an institution may use to meet this requirement.

As current § 668.41(c) requires an institution to provide to enrolled students an annual notice containing a list and brief description of the consumer information it must disclose and the procedures for obtaining this consumer information, an institution would be required to add to this list the fact that it must make readily available information regarding institutional policies and sanctions related to the unauthorized distribution of copyrighted material. Consistent with the current definition of *notice* in § 668.41(a), an institution would be required to provide this annual notice on a one-to-one basis through a direct individual notice to each enrolled student. This notice must be made through an appropriate mailing or publication, including direct mailing through the U.S. Postal Service, campus mail or electronic mail. Posting on Internet or Intranet Web sites does not constitute notice. If the institution discloses the consumer information by posting the information on a Web site, it must include in the notice the exact electronic address at which the information is posted, and a statement that the institution will provide a paper copy of the information on request.

The current definition of *prospective student* in § 668.41(a) would be used—i.e., an individual who has contacted an eligible institution requesting information concerning admission to that institution.

Reasons: The regulations are amended to reflect the changes made by the HEOA.

These proposed regulations reflect the work of a subcommittee of representatives of institutions, digital content owners, and Department staff that was formed by the larger committee to address copyright issues. The members of the subcommittee were able to successfully reconcile vastly disparate viewpoints on several contentious parts of the statute to develop proposed regulatory language that was then presented to, and tentatively agreed upon by, the full committee. The Department has chosen to preserve the compromises made by all sides on this issue by including the proposed regulatory language on which tentative agreement was reached. The Department believes that the proposed regulations provide enough specificity to emphasize that institutions must take seriously their role in combating unauthorized distribution of copyrighted materials by users of their network, while providing enough flexibility to institutions in how they combat any unauthorized distribution to acknowledge the differences among institutions and their networks, as well as variances in the scope of the problem of unauthorized distribution of copyrighted material.

Program Participation Agreement

The Department believes the intent of the statute was to require institutions to actively combat the unauthorized distribution of copyrighted material. Accordingly, § 668.14(b)(30)(i) would require an institution to agree as part of its program participation agreement that it not only has developed a plan to do so, but has also implemented that plan. In recognition that there must be a balance between network security and the functioning of a network for its intended use, § 668.14(b)(30)(i) would also make clear that an institution is not required to take measures to effectively combat the unauthorized distribution of copyrighted material that would unduly interfere with the educational and research use of the network. The Department believes that all institutions can achieve this balance, given the flexibility provided by the proposed regulations allowing individual institutions to determine how to best effectively combat such unauthorized distribution. Institutions should not view this provision as a justification for not effectively combating the unauthorized distribution of copyrighted material. Although there was some discussion of requiring an institution to effectively combat the unauthorized distribution of copyrighted material by only student users of the institution's network, the regulatory language on which tentative agreement was reached would apply the requirement more broadly to ''users.'' This approach ensures that institutions will be more likely to deter and prevent downloads of copyrighted material by employees and members of the public that may use computers at a school library, for example, and also allow them to identify illegal downloads being made by students who are not accessing the computer systems using their student accounts. The Department believes that this approach meets the intent of the statute that institutions secure their networks from misuse by individuals who are given access to the networks.

In recognition of the diversity among institutions and how technology is continuously evolving, § 668.14(b)(30)(i)(A) would leave it up to an institution's discretion to determine how many and what type of technology-based deterrents it uses as a part of its plan—although every institution must employ at least one. The Statement of Managers in the Conference Report for the HEOA discusses this issue on pages 547–549 (H. R. Conf. Rep. No. 110–803, at 547–549 (2008)), and provides context and clarification to this requirement as follows:

> Experience shows that a technology-based deterrent can be an effective element of an overall solution to combat copyright infringement, when used in combination with other internal and external solutions to educate users and enforce institutional policies.

Effective technology-based deterrents are currently available to institutions of higher education through a number of vendors. These approaches may provide an institution with the ability to choose which one best meets its needs, depending on that institution's own unique characteristics, such as cost and scale. These include bandwidth shaping, traffic monitoring to identify the largest bandwidth users, a vigorous program of accepting and responding to Digital Millennium Copyright Act (DMCA) notices, and a variety of commercial products designed to reduce or block illegal file sharing.

Rapid advances in information technology mean that new products and techniques are continually emerging. Technologies that are promising today may be obsolete a year from now and new products that are not even on the drawing board may, at some point in the not too distant future, prove highly effective. The Conferees intend that this Section be interpreted to be technology neutral and not imply that any particular technology measures are favored or required for inclusion in an institution's plans. The Conferees intend for each institution to retain the authority to determine what its particular plans for compliance with this Section will be, including those that prohibit content monitoring. The Conferees recognize that there is a broad range of possibilities that exist for institutions to consider in developing plans for purposes of complying with this Section.

The Department believes that some institutions may be able to effectively combat the unauthorized distribution of copyrighted material using only one of the four types of technology-based deterrents (bandwidth shaping, traffic monitoring, accepting and responding to DMCA notices, or a commercial product designed to reduce or block illegal file sharing) while others may need to employ a combination of such deterrents.

The additional proposed components of an effective plan in § 668.14(b)(30)(i)(B) and (C) reflect general agreement by the committee that a plan to effectively combat the unauthorized distribution of copyrighted material by users of the institution's network should include an educational component and a description of the institution's procedures for handling the unauthorized distribution of copyrighted material to provide a deterrent by ensuring that users are made aware that the unauthorized distribution of copyrighted material is illegal, what actions constitute illegal distribution of copyrighted material, and the potential penalties for the unauthorized distribution of copyrighted materials.

The final component of the plan, in proposed § 668.14(b)(30)(i)(D), would require an institution to periodically review its plan to evaluate whether it is working. One of the most controversial aspects of the proposed regulations was the evaluation of whether a plan was effectively combating the unauthorized distribution of copyrighted material. There was extensive discussion over how a plan should be reviewed to determine its effectiveness, and how much discretion institutions should be given in this area. Ultimately, tentative agreement was reached on a provision requiring an institution to periodically review its plan using relevant assessment criteria, permitting an institution discretion to determine the most appropriate criteria. As the specifics of a plan will be determined by an institution, the Department believes that the institution is in the best position to determine the appropriate criteria to assess its plan. In some cases, appropriate assessment criteria might be process-based, so long as the institution's information system information does not contradict such a determination. Such process-based criteria might look at whether the institution is following best practices, as laid out in guidance worked out between copyright owners and institutions or as developed by similarly situated institutions that have devised effective methods to combat the unauthorized distribution of copyrighted material. In other cases, assessment criteria might be outcome-based. The criteria might look at whether there are reliable indications that a particular institution's plans are effective in combating the unauthorized distribution of copyrighted material. Among such indications may be ''before and after'' comparisons of bandwidth used for peer-to-peer applications, low recidivism rates, and reductions (either in absolute or in relative numbers) in the number of legitimate electronic infringement notices received from rights holders. The institution is expected to use the assessment criteria it determines are relevant to evaluate how effective its plans are in combating the unauthorized distribution of copyrighted materials by users of the institution's networks.

In addition to reflecting the statute requiring that institutions, to the extent practicable, offer legal alternatives to illegal downloading or otherwise acquiring copyrighted material, proposed § 668.14(b)(30)(ii) reflects general agreement that institutions should periodically review the legal alternatives, and make available the results of the review to its students through a Web site or other means, as such legal alternatives are likely to change over time. Based on the discussions of the subcommittee, the Department anticipates that individual institutions, national associations, and commercial entities will develop and maintain up-to-date lists that may be referenced for compliance with this provision.

Consumer Information

For consistency, § 668.43(a)(10) would implement the consumer information portion of the statute within the existing framework and using the definitions found in current regulations. The committee discussed whether the statutorily required annual disclosure should be a one-to-one notice provided directly to each student by the institution. However, as the statute requires that most institutional information in this section of the HEA instead be made readily available to prospective and enrolled students, the information regarding institutional policies and sanctions related to the unauthorized distribution of copyrighted material would be handled in the same manner (i.e., included in the list of institutional information that an institution must make available pursuant to § 668.43). The Department believes that the required disclosure of institutional policies and sanctions related to the unauthorized distribution of copyrighted materials can be met without imposing the burden of a one-to-one notification on institutions.

There was some discussion by the committee of extending the statutory provision to require an institution to disclose the required information to employees of the institution in addition to students. As the statute does not require disclosure of this information to employees, this would not be mandated in the regulations. The Department believes that employees of an institution are more likely to be aware that unauthorized distribution of copyrighted material is illegal and does not believe that the benefit of such disclosure would justify the potential added burden to the institution. However, we encourage institutions to make such information available to employees and the general public if they believe it will be beneficial.

Consumer Information (§§ 668.41 and 668.45)

Statute: Section 485(a) of the HEA lists the types of information that institutions are required to make available to prospective and enrolled students. Section 488 of the HEOA expands the list of consumer information requirements in section 485(a)(1) of the HEA, and from that

expanded list, Team V discussed a number of the requirements, including the following:

- The placement and types of employment obtained by graduates of the institution's degree or certificate programs;
- The types of graduate and professional education in which graduates of the institution's four-year degree programs enrolled; and
- The retention rates of the certificate or degree seeking, first-time, full-time, undergraduate students entering the institution.

Note that the information required by section 485(a)(1) of the HEA addressing ''institutional policies and sanctions that relate to copyright infringements'' and ''the fire safety report'' (that is prepared by the institution pursuant to section 485(i) of the HEA) is discussed elsewhere in this preamble.

Section 488 of the HEOA also amends the calculation procedures for completion and graduation rates in section 485(a)(4) of the HEA that address situations in which students leave school to serve in the Armed Forces, on official church missions, or with a recognized foreign aid service of the Federal Government. Section 488 of the HEOA also adds section 485(a)(7) to the HEA, which directs an institution to disaggregate its completion and graduation rate information by gender, by each major racial and ethnic subgroup, and by recipients of several types of Federal title IV aid—if the number of students in each such subgroup or with each such status is sufficient to yield statistically reliable information and reporting this information will not reveal personally identifiable information about an individual student.

Current Regulations: Section 668.41 lists the types of information that an institution must make available to enrolled and prospective students (and in some cases, employees, prospective employees, prospective student-athletes, the public, and others). This information includes:

- Financial assistance available to students;
- The institution's completion and graduation rate;
- An annual security report (including institutional security policies and crime statistics that are described in § 668.46);
- The completion and graduation rates for student-athletes;
- Athletic program participation rates and financial support data; and
- Institutional information (including the cost to attend the institution, its academic programs and faculty, etc.).

Section 668.45 specifies how an institution must prepare the annual completion or graduation rate for its certificate- or degree-seeking, full-time, undergraduate students. It also addresses how an institution must prepare a transfer-out rate if the institution's mission includes providing substantial preparation for students to enroll in another institution. An institution must make its completion or graduation rate, and if applicable, its transfer-out rate available by July 1 following the 12-month period ending August 31 during which 150 percent of the normal time for completion or graduation has elapsed for the students on which the institution bases its calculations.

Proposed Regulations: In proposed § 668.41(d), we would add retention rate information, placement rate information, and information on the types of graduate and professional education in which graduates of the institution's four-year degree programs enroll, to the types of information that an institution must provide to its enrolled and prospective students. When reporting its retention rate, proposed § 668.41(d) would require an institution to disclose the institution's retention rate as reported to the Integrated Postsecondary Education Data System (IPEDS). We have adopted IPEDS' definition of ''retention rate'' in proposed § 668.41(a) for this purpose. For its placement information, the institution may use various sources of information (such as State data systems, surveys, or other relevant sources). However, if it calculates an actual placement rate, it must disclose that rate. For the types of graduate and professional education in which graduates of the institution's four-year degree programs enroll, the institution also may use various sources of information (such as State data systems, surveys, or other relevant sources). For both placement information and the types of graduate and professional education in which graduates of the institution's four-year degree programs enroll, the institution would have to identify the source of the information it discloses, as well as the time frames and methodology associated with that information.

In addressing the requirement for an institution to make certain information available to students or prospective students (and sometimes the public), we have removed the words ''on request'' in proposed § 668.41(d) and (g)(1)(i). Similar words have been deleted from proposed § 668.43(a) and (b).

Under proposed § 668.45, an institution's completion and graduation rate information must be disaggregated by gender, by each major racial and ethnic subgroup, and by whether or not the institution's students received certain types of Federal student aid. The disaggregation by receipt of aid is categorized by whether students were—

- Recipients of a Federal Pell Grant;
- Recipients of a Federal Family Education Loan or a Federal Direct Loan (other than an Unsubsidized Stafford Loan); and
- Recipients of neither a Federal Pell Grant nor a Federal Family Education Loan or a Federal Direct Loan (other than an Unsubsidized Stafford loan).

The institution would report its completion and graduation rate information in a disaggregated manner only if the number of students in each category is sufficient to yield statistically reliable information, and doing so would not reveal personally identifiable information about an individual student. Otherwise, the institution would note that it enrolled too few students in the affected category to disclose the information with confidence and confidentiality.

In calculating its completion and graduation rate, an institution normally counts students as completing or graduating if they have completed or graduated by the end of the 12-month period ending August 31 during which 150 percent of the normal time for completion or graduation from the program has elapsed. However, as proposed, if 20 percent or more of the certificate- or degree-seeking, full-time, undergraduate students at the institution left school to serve in the Armed Forces, to serve on official church missions, or to serve with a foreign aid service of the Federal Government (such as the Peace Corps), then the institution may recalculate the completion or graduation rate of those students by adding to the 150 percent time frame they normally have to complete or graduate, the time period the students were not enrolled due to their service in one of these specified categories.

Reasons: The proposed changes in §§ 668.41 and 668.45 would implement statutory changes to section 485 of the HEA made by section 488 of the HEOA. As specified in § 668.41(d), institutions are allowed to use various sources to compile information on placements and on the types of graduate and professional education in which graduates of the institution's four-year degree programs enroll. A number of the non-Federal negotiators noted that this latitude to compile information from various sources should not be compromised or otherwise qualified by

requiring institutions to disclose methodologies used in compiling the data. However, because the information can come from any number of sources and may not be comparable to similar-looking information at another institution, the Department believes it is important that the institution disclose the source of the information, as well as the time frames and methodology associated with it, when the institution discloses that information to its enrolled and prospective students. This will allow the student and prospective student recipients of the information to make more informed decisions regarding their educational choices.

Since the statute is silent about requiring an institution to calculate an actual placement rate, or to disseminate that rate if it calculates one, a number of non-Federal negotiators argued that the regulations should remain silent in that regard. However, the Department believes that disclosing placement rate information would be beneficial to students and prospective students. If the institution makes available placement rates that it has, students and especially prospective students will be able to make more informed decisions about enrollment in various programs at the institution. Therefore, when a placement rate is voluntarily calculated by the institution, proposed § 668.41(d) would require the institution to disclose that rate along with other placement information.

The words ''on request'' (or ''upon request'') were removed from §§ 668.41(d), 668.41(g)(1)(i), and 668.43(a) and (b) because the Department believes that they do not reflect how institutions currently operate in terms of making various types of information available to their students, prospective students, and sometimes the public. While it is true that an individual may not receive information unless he or she asks about it, institutions, in essence, are considered to ''make their information available'' by having it on a Web site or in printed material without regard to whether any one individual requests it or not. When an individual inquires about the information in question, the institution would direct him or her to the appropriate source.

The requirement in proposed § 668.45 for an institution to disaggregate its completion and graduation rate information by gender, by each major racial and ethnic subgroup, and by receipt or nonreceipt of certain types of Federal student aid is from section 485 of the HEA. All of the negotiators agreed that the Department should use the IPEDS racial and ethnic categories for this purpose, but several of them raised the issue of how institutions should disaggregate the information by receipt or nonreceipt of student aid. For example, should a student be considered to have received aid if the student received it at any time during his enrollment, or only during the student's first year, or for some other period of time? The Department and the non-Federal negotiators ultimately agreed that the question of receipt of aid for this determination should be based on whether the student received the aid during the time period when the student entered the institution that is associated with the cohort of students the student is a part of for purposes of the institution's calculation of completion or graduation, retention, and transfer out rates. For institutions with a predominate number of programs based on semesters, trimesters, or quarters, this would be the fall term of the year the student's cohort of certificate- or degree-seeking, first-time, full-time undergraduate students first entered the institution. For other institutions, this would be the period between September 1 of one year and August 31 of the following year when the student's cohort of certificate- or degree-seeking, first-time, full-time undergraduate students first entered the institution.

It is possible that an institution could have a significant number of its students interrupt their education to serve in the Armed Forces, on church missions, or with a foreign aid service of the Federal Government (*e.g.,* the Peace Corps). Were that to occur, the normal calculation of the institution's completion or graduation rate would result in a misleadingly smaller rate. Thus, consistent with section 485 of the HEA, when 20 percent or more of the certificate- or degree-seeking, full-time, undergraduate students at the institution leave school to serve in one of the ways listed in § 668.45(d)(1)(i) through (iii), the institution may recalculate its completion or graduation rate to take that fact into consideration. That is, when the institution calculates its completion or graduation rate, it may add the time period the students were not enrolled due to their service time to the 150 percent time frame that students normally have to complete or graduate.

Campus Safety Provisions

Hate Crime Reporting (§ 668.46(c)(3))

Statute: Section 488(e)(1)(c) of the HEOA amended section 485(f) of the HEA to expand the list of hate crimes that institutions must report to the Department to include larceny-theft, simple assault, intimidation, and destruction, damage, or vandalism of property.

Current Regulations: Section 668.46(c)(3) of the Department's regulations currently requires institutions to report as hate crimes the occurrence of criminal homicide, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, arson, and any other crime involving bodily injury reported to local police agencies or a campus security authority if there is manifest evidence that the victim was intentionally selected on the basis of certain characteristics.

Proposed Regulations: We propose to revise § 668.46(c)(3) to add the crimes of ''larceny-theft,'' ''simple assault,'' ''intimidation,'' and ''destruction/damage/vandalism of property'' to the crimes that must be reported in hate crime statistics. Additionally, we would update the definitions of the terms ''Weapons: carrying, possessing, etc.,'' ''Drug abuse violations,'' and ''Liquor law violations'' in appendix A to subpart D of 34 CFR part 668, which are excerpted from the Federal Bureau of Investigation's Uniform Crime Reporting Program, to reflect changes made by the FBI.

Reasons: The proposed regulations would implement the statutory changes made by the HEOA by using the FBI's Hate Crime Data Collection Guidelines in the Uniform Crime Reporting Handbook (available at *http://www.fbi.gov/ucr/hatecrime.pdf*) to define the hate crimes to be reported.

Definition of Test (§ 668.46(a))

Statute: Section 488(e)(1)(D) of the HEOA amended section 485(f) of the HEA to require institutions to include a statement of policy regarding their emergency response and evacuation procedures in the annual security report. As part of this policy statement an institution must describe how it will test its emergency response and evacuation procedures on an annual basis. *Current Regulations:* Section 668.46(a) contains definitions that apply to the requirements for institutional security policies and the reporting of crime statistics.

Proposed Regulation: Under proposed § 668.46(a), we would define *test* for purposes of the emergency response and evacuation procedures as ''regularly scheduled drills, exercises, and appropriate follow-through activities, designed for assessment and evaluation of emergency plans and capabilities.''

Reasons: This definition would clarify the meaning of *test* for the purposes of complying with the statutory requirement that an institution test its emergency response and evacuation

procedures. Following a recommendation from some of the non-Federal negotiators, the definition of the term was drawn from the Emergency Management Accreditation Program (EMAP) Standard, which was designed to serve as a set of standards defining a quality emergency management program and was collaboratively developed by numerous organizations involved in emergency management and response.

Annual Security Report—Emergency Response and Evacuation Procedures (§ 668.46(b))

Statute: Section 485(f) of the HEA outlines the elements that must be included in an institution's annual security report. Section 488(e)(1)(D) of the HEOA added to section 485(f) of the HEA a requirement that an institution must include a statement of policy regarding emergency response and evacuation procedures in its annual security report. This statement must describe how the institution will immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff occurring on the campus, unless the notification will compromise efforts to contain the emergency.

Current Regulations: Section 668.46(b) delineates the elements that must be included in an institution's annual security report.

Proposed Regulations: Proposed § 668.46(b)(13) would require institutions to include a statement of policy regarding their emergency response and evacuation procedures in the annual security report. Institutions must satisfy this requirement beginning with the annual security report distributed by October 1, 2010.

Reasons: These new provisions implement the new statutory requirement. We would require this statement of policy for the October 1, 2010 report because it is the first report due after these regulations would go into effect. As institutions are expected to make a good faith effort to comply with the statute in the absence of regulations, institutions should be gathering this information in preparation for the 2010 report.

Timely Warning and Emergency Notification (§ 668.46(e))

Statute: Section 485(f)(3) of the HEA requires institutions to make timely warnings to the campus community on crimes considered to be a threat to students and employees that are reported to campus security or local police agencies. Section 488(e)(1)(D) of the HEOA added section 485(f)(1)(J) to the HEA to require institutions to have a policy for emergency notification of the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff occurring on the campus, unless the notification will compromise efforts to contain the emergency.

Current Regulations: Section 668.46(e) describes the situations in which an institution must send a timely warning to the campus community to report on crimes that are considered by the institution to represent a threat to students and employees.

Proposed Regulations: Proposed § 668.46(e)(3) would clarify the difference between the existing timely warning requirement and the new requirement for an emergency notification policy. While a timely warning must be issued in response to crimes specified in § 668.46(c)(1) and (3), an emergency notification is required in the case of an immediate threat to the health or safety of students or employees occurring on campus, as described in proposed § 668.46(g). The proposed language would clarify that an institution that follows its emergency notification procedures is not required to issue a timely warning based on the same circumstances; however, the institution must provide adequate follow-up information to the community as needed.

Reasons: Many of the non-Federal negotiators requested that the regulations clearly explain the difference between a timely warning circumstance and an emergency notification circumstance. The emergency notification requirement applies to a wider range of threats, such as crimes, gas leaks, highly contagious viruses, or hurricanes. Many non-Federal negotiators also asked that the Department make it clear that institutions may satisfy a timely warning requirement with an emergency notification in appropriate circumstances to avoid inundating students and employees with messages that may become ineffective. On the other hand, some non-Federal negotiators also expressed concern that providing insufficient information could jeopardize the safety of the campus community, for instance, in a situation in which the emergency or investigation is still developing.

To address these concerns, we are proposing to require an institution that uses its emergency notification system to provide follow-up information to the community as needed. The phrase ''as needed'' was used to address the wide variety of threats that might occur.

Annual Security Report—Emergency Response and Evacuation Procedures (§ 668.46(g))

Statute: Section 485(f)(1)(J) of the HEA, added by the HEOA, requires institutions to include a statement of policy regarding emergency response and evacuation procedures in the annual security report. This policy statement must describe how the institution will immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff occurring on the campus, unless the notification will compromise efforts to contain the emergency.

Current Regulations: None.

Proposed Regulations: Proposed § 668.46(g) would set out the following elements that an institution must include in its statement of policy describing its emergency response and evacuation procedures in its annual security report:

- Procedures to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus.
- A description of the process that the institution will use to (1) confirm that there is a significant emergency or dangerous situation, (2) determine the appropriate segment or segments of the campus community to receive a notification, (3) determine the content of the notification, and (4) initiate the notification system.
- A statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing the notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency.
- A list of the titles of the persons or organizations responsible for carrying out the actions in proposed § 668.46(g)(2).
- Procedures for disseminating emergency information to the larger community.
- Procedures for testing its emergency response and evacuation procedures on at least an annual basis. Such tests could be announced or unannounced, would be publicized in conjunction with at least one test per calendar year,

and would be documented, including a description of the exercise, the date, time, and whether it was announced or announced.

Reasons: The proposed regulations are intended to ensure that institutions have sufficiently prepared for an emergency situation on campus, that they are testing these procedures to identify and improve weaknesses, and that they have considered how they will inform the campus community and other individuals, such as parents. While the non-Federal negotiators generally agreed with these goals, some of them expressed concern that institutions need to have flexibility to appropriately respond to situations while maintaining a level of accountability in the system.

To allow appropriate flexibility in the system, the Department has not specified that institutions use a particular mode of communication, but notes that institutions may and should have multiple methods of communication with the campus community. For example, in the case of a gas leak, an institution may determine that the most effective mode of communication is a fire alarm, whereas in other situations it might be best to use a text message system. The Department encourages institutions to consider overlapping means of communication in case one method fails or malfunctions. Additionally, institutions have the flexibility to alert only the appropriate segment or segments of the population that they determine to be at risk; for instance, only notifying individuals in the building where there is a gas leak. This provision is intended to guard against the possibility that too many emergency notifications would lead some members of the campus community to begin to ignore the notices, thus dampening its response to a potentially dangerous situation. Institutions also have the flexibility to list the organizations that may be best equipped to respond to different situations, for instance, the health department may best respond to an outbreak of a virus. Further, institutions would have a great deal of flexibility in designing tests of the emergency notification system, as a *test,* as defined in the proposed changes to § 668.46(a), could be done in many ways, such as by a tabletop exercise or a test conducted on a campus-wide scale.

Parents and students affected by the shootings at the Virginia Polytechnic Institute and State University in 2007 attended part of the negotiations and discussed their experiences and opinions regarding how the Department should regulate in this area. They emphasized the need for institutions to keep parents and families informed in the case of an emergency. Some non-Federal negotiators suggested that institutions be encouraged to use Web sites, radio, and television stations to keep the larger community apprised of emergency situations. Additionally, in the case of an institution that uses a texting system to relay emergency notification information, several non-Federal negotiators suggested allowing parents to sign up to receive texts along with students and employees.

Some non-Federal negotiators were concerned that an institution could misinterpret these proposed regulations to mean that, as part of its procedures, it should disclose all of the details of how it would respond to any of a variety of situations. The negotiators noted that this approach could potentially hamper law enforcement efforts to address or investigate an emergency. In response, we note that the proposed regulations would not require institutions to publish in great detail how they would respond to specific emergencies. Finally, many non-Federal negotiators raised concerns that institutions consider the needs of students with disabilities in developing emergency response and evacuation policies and procedures. The Department expects an institution to consider the diverse needs of all members of the campus community in developing or revising an emergency plan.

Definition of On-Campus Student Housing Facility (§ 668.41(a))

Statute: Section 488(g) of the HEOA added section 485(j) to the HEA to require an institution that maintains an on-campus student housing facility to establish, for students who reside in on-campus student housing, a missing student notification policy that allows students to confidentially register a contact person, and procedures to notify that contact person if the student is missing for more than 24 hours.

Current Regulations: Section 668.41(a) contains definitions that apply to 34 CFR part 668, subpart D.

Proposed Regulations: The proposed regulations would add a definition of the term *on-campus student housing facility* to § 668.41(a) to mean a dormitory or other residential facility for students that is located on an institution's campus, as defined in § 668.46(a).

Reasons: The proposed definition would be added to clarify what is meant by *on-campus student housing facility* and to link the meaning of ''on-campus'' to the existing regulatory definition of *campus* in § 668.46(a), which is used for crime reporting under § 668.46(c). For the purposes of the fire safety reporting requirements under proposed § 668.49 and the missing student notification policies and procedures requirements under proposed § 668.46, a student housing facility that is on property owned by an institution, even if the building is owned and maintained by a student organization or other party, would be considered an on-campus student housing facility. If neither the property nor the building is owned by the institution, then the student housing facility would not be covered by this definition. While *on-campus student housing facility* is used in the statute in reference to the new fire safety and missing student notification provisions, the definition of *on-campus student housing facility* would also apply to the existing crime reporting requirements in § 668.46. The Department believes this approach will minimize confusion and create less administrative burden for institutions.

Annual Security Report—Missing Student Notification Policy (§ 668.46(b) and (h))

Statute: Section 485(f) of the HEA, as amended by the section 488(g) of the HEOA, requires institutions that maintain an on-campus student housing facility to establish, for students who reside in an on-campus student housing facility, both a missing student notification policy that allows students to confidentially register a contact person, and procedures for notifying a missing student's contact person.

Current Regulations: Section 668.46(b) delineates the elements that must be included in an institution's annual security report.

Proposed Regulations: The proposed changes in § 668.46(b)(14) would require an institution to include its missing student notification policy and procedures in its annual security report. This would be required beginning with the annual security report distributed by October 1, 2010.

Reasons: Some non-Federal negotiators felt that an institution should have the flexibility to decide how and when to distribute its missing student policies and procedures. The Department considered this suggestion but agrees with other negotiators who argued that having the information in the annual security report would enable students and parents to more easily compare policies across institutions. We propose to require that these policies and procedures be included in the institution's annual security report, but note that institutions may also distribute

these policies and procedures at other appropriate times, such as during a new student orientation. This policy statement must be included in the report that must be distributed by October 1, 2010 because it is the first report due after these regulations go into effect. Institutions must make a good faith effort to comply with the statute in the absence of regulations; therefore, institutions should be gathering this information in preparation for the 2010 report.

Missing Student Notification Policy (§ 668.46(h))

Statute: Section 485 of the HEA, as amended by section 488 of the HEOA, requires an institution that maintains an on-campus student housing facility to establish, for students who reside in on-campus student housing, a missing student notification policy that includes notifying students that they can confidentially register an individual to be contacted if the student is determined to be missing. The statute requires an institution to advise students who are under 18 years old and not emancipated that a custodial parent or guardian must be notified if the student is determined to be missing. Further, all students residing in an on-campus student housing facility must be advised that, regardless of whether they register a contact person, the local law enforcement agency will be notified in the event that the student is determined to be missing.

Current Regulations: None.

Proposed Regulations: Proposed § 668.46(h)(1) implements the new statutory requirements, specifying that an institution's statement of policy regarding missing student notification for students residing in on-campus student housing facilities must include:

- A list of the titles of the persons or organizations to which students, employees, or other individuals should report that a student has been missing for 24 hours;
- A requirement that any official missing student report be immediately referred to the institution's police or campus security department or to the local law enforcement agency with jurisdiction in the area;
- The option for each student to identify a contact person to be notified if the student is determined missing by the institutional police or campus security department, or the local law enforcement agency; and
- A disclosure that contact information will be registered and maintained confidentially.

Proposed § 668.46(h)(1) would further require an institution to advise students who are under 18 and not emancipated that if the student is missing it will notify a custodial parent or guardian in addition to any contact person designated by the student. All students must also be advised that, regardless of whether they name a contact person, the institution must notify the local law enforcement agency that the student is missing, unless the local law enforcement was the entity that determined that the student is missing.

Reasons: These new provisions would implement the statutory requirements. Like the existing crime reporting regulations and the proposed fire reporting regulations, these proposed regulations require institutions to include a list of the titles of the persons or organizations to which a student should be reported missing.

These regulations provide that only authorized campus officials, and law enforcement officers in furtherance of a missing person investigation, may have access to the confidential contact information and that it may not be disclosed to others. This limit was proposed in order to protect the privacy rights and safety of the student.

Missing Student Notification Procedures (§ 668.46(h))

Statute: Section 485 of the HEA, as amended by section 488(g) of the HEOA, requires an institution that maintains an on-campus student housing facility to establish procedures that the institution will follow if a student who resides in on-campus student housing is determined to be missing. The statute specifies time frames during which certain actions must occur. When a student is reported missing, the institution has 24 hours to inform the local law enforcement agency with jurisdiction in the area where the student has been reported missing. After the law enforcement agency determines that the student is missing, the institution has 24 hours to notify the student's contact person, if applicable.

Current Regulations: None.

Proposed Regulations: Proposed § 668.46(h)(2) reflects the statutory requirements.

Reasons: The proposed regulations reflect the new statutory requirements. These regulations do not preclude the institution from contacting the student's contact person or the parent immediately upon determination that the student has been missing for 24 hours.

Annual Fire Safety Report (§ 668.41(e))

Statute: Section 488(g) of the HEOA amended section 485 of the HEA to require institutions that maintain on-campus student housing facilities to publish a fire safety report each year and provide a copy of the report to the Secretary.

Current Regulations: None.

Proposed Regulations: Proposed § 668.41(e) would provide that institutions that maintain an on-campus student housing facility must distribute an annual fire safety report, as described in proposed § 668.49(b). In addition, we propose to revise § 668.41(e) to create publication requirements for the annual fire safety report that are similar to the long-standing regulations for the annual security report.

The proposed regulations would allow an institution to publish the annual security report and the annual fire safety report together, as long as the title of the document clearly states that it contains both the annual security report and the annual fire safety report. If an institution chooses to publish the reports separately, it would have to include information in each of the two reports about how to directly access the other report.

Reasons: We are proposing to require the same distribution method for both the annual fire safety report and the annual security report to reduce administrative burden and to make it easier for students and parents to access the information. The Department believes that providing one source for this information best ensures that students and parents will find and review the material. Under the proposed regulations, institutions would have the flexibility to choose whether to combine the two reports; however, if the reports are combined, the title of the combined document must make it clear that both the annual fire safety report and the annual security report are included to give both reports equal emphasis and to clarify that the fire safety provisions are separate from the crime provisions. An institution that chooses to publish the reports separately must provide information in each report about how to directly access the other report to aid students and parents in locating and comparing information across institutions.

Annual Fire Safety Report—Definitions of Terms (§ 668.49(a))

Statute: Section 485(i)(1) of the HEA, as amended by section 488(g) of the HEOA, specifies that the annual fire safety report must contain statistics concerning the number of fires in the institution's on-campus housing facilities; the cause of each fire; the number of injuries and deaths related to each fire; and the value of property damage caused by each fire.

Additionally, the annual fire safety report must include a description of each on-campus student housing facility fire safety system and the number of regular mandatory supervised fire drills.

Current Regulations: None.

Proposed Regulations: We are proposing to add new § 668.49(a) to define the following terms relevant to the fire safety reporting requirements:

- *Cause of fire:* The factor or factors that give rise to a fire. The causal factor may be, but is not limited to, the result of an intentional or unintentional action, mechanical failure, or act of nature.
- *Fire:* Any instance of open flame or other burning in a place not intended to contain the burning or in an uncontrolled manner.
- *Fire drill:* A supervised practice of a mandatory evacuation of a building for a fire.
- *Fire-related injury:* Any instance in which a person is injured as a result of a fire, including an injury sustained from a natural or accidental cause, while involved in fire control, attempting rescue, or escaping from the dangers of a fire. The term ''person'' may include students, faculty, staff, visitors, firefighters, or any other individuals.
- *Fire-related death:* Any instance in which a person (1) is killed as a result of a fire, including death resulting from a natural or accidental cause while involved in fire control, attempting rescue, or escaping from the dangers of a fire; or (2) dies within one year of injuries sustained as a result of a fire.
- *Fire-safety system:* Any mechanism or system related to the detection of a fire, the warning resulting from a fire, or the control of a fire. This may include sprinkler systems or other fire extinguishing systems; fire detection devices; stand-alone smoke alarms; devices that alert one to the presence of a fire, such as horns, bells, or strobe lights; smoke-control and reduction mechanisms; and fire doors and walls that reduce the spread of a fire.
- *Value of property damage:* The estimated value of the loss of the structure and contents, in terms of the cost of replacement in like kind and quantity. This estimate should include contents damaged by fire, and related damages caused by smoke, water, and overhaul; however, it does not include indirect loss, such as business interruption.

Reasons: We have added these definitions to enable comparability across institutions of the statistics that institutions are required to report under section 485(i)(1) of the HEA. The definitions for *cause of fire, fire-related injury, fire-related death,* and *value of property damage* were drawn largely from the National Fire Incident Reporting System (NFIRS), a standard national reporting system used by U.S. fire departments to report fires and other incidents. The non-Federal negotiators recommended, and we agreed, that we should use the NFIRS definitions to remain consistent with definitions already used in the field. The definition of *fire drill* was developed to capture the HEA requirement that institutions report regular, mandatory, supervised fire drills. Further, the definition of fire safety system was developed through collaboration with experts in the fire safety field, who advised that the definition should include the variety of systems and mechanisms used to detect and alert someone to the presence of a fire, reduce the spread of fire, and control and reduce the amount of smoke from a fire.

The committee discussed the definition of *fire* at length. Generally, the negotiators agreed that the critical elements of a reportable fire are that it occurs in a place not intended to contain the fire or involves any burning that is not under control. For instance, under these proposed regulations, a fire in a trash can would count as a fire for reporting purposes, even if the fire was still under control, because a trash can is not intended to contain a fire. A lit candle, by contrast, while possibly against the institution's policies for candles in dorms, would not generally be considered a reportable fire, as it is in a place intended to contain the fire and is under control. However, if the flame from a lit candle were to spread and become uncontrolled, it would be considered a reportable fire. The definition of *fire* is also intended to capture situations in which there is burning (not necessarily an open flame) that might easily become a fire, such as a smoldering couch. Burning or other flames can easily become a fire, at great risk to students and other individuals.

Annual Fire Safety Report—Statistics (§ 668.49(b) and (c))

Statute: Section 485(i)(1), as amended by section 488(g) of the HEOA, requires an institution to include in its annual fire safety report statistics on the number of fires and the cause of each fire; the number of injuries related to a fire that resulted in treatment at a medical facility; the number of deaths related to a fire; and the value of property damage caused by a fire. Section 485(i)(2) of the HEA requires that an institution report these statistics to the Secretary.

Current Regulations: None.

Proposed Regulations: Proposed § 668.49(b)(1) would require an institution to report the statistics that it submits to the Department in its annual fire safety report. The institution would have to provide data for the three most recent calendar years for which data are available. Proposed § 668.49(c) would delineate the statutorily required statistics.

Reasons: The proposed regulations would implement the statutory requirements. The majority of the committee supported the position that institutions should report statistics for the three most recent calendar years to remain consistent with current reporting requirements for crime statistics under § 668.46(c). Moreover, the three year time frame will better enable consumers to compare statistics across institutions while helping to identify trends in the data. This reporting requirement would be phased in beginning with the collection of statistics for calendar year 2009 in the October 1, 2010 Annual Fire Safety Report. Data would be collected for three subsequent calendar years until three years are represented. The first report to contain the full three years of data would be the report due on October 1, 2012.

Annual Fire Safety Report—Description of Policies (§ 668.49(b))

Statute: Section § 485(i)(1) of the HEA, as amended by section 488(g) of the HEOA, requires that, in its annual fire safety report, an institution must include a description of each on-campus student housing facility fire safety system, including fire sprinkler systems; the number of regular mandatory supervised fire drills; the institution's policies on portable electrical appliances, smoking, and open flames; procedures for evacuation; fire safety education and training program policies; and plans for future improvements in fire safety, if applicable.

Current Regulations: None.

Proposed Regulations: Proposed § 668.49(b) would outline the elements that an institution must disclose in its annual fire safety report, including:

- The fire statistics required by paragraph 485(i)(1)(A) of the HEA;
- A description of each on-campus student housing facility fire safety system;
- The number of fire drills held during the previous calendar year;
- Policies or rules on portable electrical appliances, smoking, and open flames in student housing facilities;

• Procedures for evacuation of student housing facilities in the case of a fire;

• Policies on fire safety education and training programs provided to students, faculty, and staff, including a description of the procedures that students and employees should follow in the case of a fire;

• For purposes of including a fire in the statistics in the annual fire safety report, a list of the titles of each person or organization to which students and employees should report that a fire has occurred; and

• Plans for future improvements in fire safety, if determined necessary by the institution.

Reasons: These proposed regulations would implement the statutory requirements for the annual fire safety report, and specify that an institution must include: (1) A description of the procedures that students and employees should follow in the case of a fire, and (2) procedures for reporting fires that do not require a call to the fire department, for instance, those that are discovered after the fact and are no longer a threat to safety. In response to concerns expressed by some negotiators that all fires, even those that have already been put out, should be included in reported statistics, the proposed regulations would require institutions to provide a list of the titles of each person or organization to which such fires should be reported.

Fire Log (§ 668.49(d))

Statute: Section 485(i)(3) of the HEA, as amended by section 488(g) of the HEOA, requires an institution that maintains an on-campus student housing facility to maintain a log of all fires that occur in on-campus student housing facilities, including the nature, date, time, and general location of each fire. An institution must make annual reports to the campus community on such fires.

Current Regulations: None.

Proposed Regulations: Proposed § 668.49(d) would specify that an institution that maintains an on-campus student housing facility must maintain a written and easily understood fire log that records, by the date that the fire was reported, any fire that occurred in an on-campus student housing facility. The log would have to include the nature, date, time, and general location of each fire. Further, the proposed regulations would specify that additions or changes to the log must be made within two business days of the receipt of the information, and require that the log be available for public inspection for the most recent 60-day period. Any portion of the log older than 60 days must be made available within two business days of a request for inspection. Finally, the proposed regulations would also implement the statutory requirement that an institution make an annual report to the campus community on the fires recorded in the fire log; however, the proposed regulations specify that this requirement may be satisfied by the annual fire safety report described in proposed § 668.49(b).

Reasons: The proposed regulations would implement the statutory requirement that an institution record all reportable fires in a fire log. Many of the negotiators recommended that institutions have flexibility in maintaining this log. Therefore, we have not specified a format for the log, and we would allow institutions to determine whether to combine the annual report to the campus community on the fires in the fire log with the annual fire safety report. Many negotiators also recommended, and we agreed, that the fire log follow the requirements for the crime log. As a result, we have specified requirements for how information in the fire log should be updated, in accordance with the long-standing requirements for the crime log described in § 668.46(f).

Financial Assistance for Students With Intellectual Disabilities

Intellectual Disabilities

Institutional Eligibility and Eligible Program (§§ 600.2, 600.4, 600.5, 600.6, and 668.8)

Statute: Section 485(a)(8) of the HEOA added section 484(s) to the HEA to provide that a student with intellectual disabilities who enrolls in a comprehensive transition and postsecondary program is eligible to receive title IV, HEA program funds under the Federal Pell Grant, FSEOG, and FWS programs. Under the newly added provision, the student does not have to be a high school graduate (or have obtained a GED, or have passed an ability-to-benefit test) and does not have to be enrolled in a program that leads to a degree or certificate.

Current Regulations: Section 600.2 defines an *educational program* as a legally authorized postsecondary program of organized instruction or study that, in part, leads to an academic, professional, or vocational degree, or certificate, or other recognized educational credential.

Under the definitions of an *institution of higher education* (§ 600.4(a)(2)), *proprietary institution of higher education* (§ 600.5(a)(3)), and *postsecondary vocational institution* (§ 600.6(a)(2)), the institution is required to admit as regular students, as defined in § 600.2, only those persons who have a high school diploma or its equivalent. In addition, in §§ 600.4(a)(4), 600.5(a)(5), 600.6(a)(4), and the definition of an eligible program under § 668.8(c)(1) and (d)(1)(iii), the institution must provide an educational program for which it awards a degree, certificate, or other recognized credential or that prepares students for gainful employment in a recognized occupation.

Proposed Regulations: Proposed §§ 600.2 (paragraph (1)(i) of the definition of *educational program*), 600.4(a)(4), 600.5(a)(5), and 600.6(a)(4) would provide that an institution may provide a comprehensive transition and postsecondary program for students with intellectual disabilities. In addition, proposed § 668.8(n) would define a comprehensive transition and postsecondary program as an eligible program if it is approved by the Secretary.

Reasons: The proposed regulations would implement the statutory requirements by making it clear that an institution does not jeopardize its participation in the title IV, HEA programs by admitting students with intellectual disabilities who do not have a high school diploma or its equivalent, or admitting students with intellectual disabilities into non-degree or non-certificate programs. In addition, the proposed regulations would specify that a comprehensive transition and postsecondary program approved by the Secretary qualifies as an eligible program.

Scope and Purpose (§ 668.230)

Statute: Section 485(a) of the HEOA added section 484(s) to the HEA authorizing the Secretary to develop regulations allowing students with intellectual disabilities to be eligible for funds under the Federal Pell Grant, FSEOG, and FWS programs. New section 484(s)(3) of the HEA authorizes the Secretary to waive any statutory provision applicable to these programs, except needs analysis provisions, or waive any institutional eligibility provisions, to ensure that students with intellectual disabilities who enroll in comprehensive transition and postsecondary programs remain eligible for this assistance.

Current Regulations: None.

Proposed Regulations: The proposed regulations would specify that students with intellectual disabilities who enroll in comprehensive transition and postsecondary programs are eligible for

assistance under the Federal Pell Grant, FSEOG, and FWS programs, and would restate the Secretary's waiver authority by providing that, except for provisions related to needs analysis, the Secretary may waive any title IV, HEA program requirement related to these programs or institutional eligibility.

Reasons: The proposed regulations would implement the statutory provisions, and clarify that the Secretary's waiver authority may be used to ensure that students with intellectual disabilities remain eligible for Federal Pell Grant, FSEOG, and FWS program funds.

Definition of a Comprehensive Transition and Postsecondary Program (§ 668.231)

Statute: Section 709 of the HEOA added section 760 to the HEA to define a *comprehensive transition and postsecondary program* as a degree, certificate, or non-degree program that—

- Is offered by an institution of higher education;
- Is designed to support students with intellectual disabilities who are seeking to continue academic, career and technical, and independent living instruction at an institution to prepare for gainful employment;
- Includes an advising and curriculum structure; and
- Requires students with intellectual disabilities to participate on not less than a half-time basis, as determined by the institution, with that participation focusing on academic components and occurring through one or more of the following activities:
- Regular enrollment in credit-bearing courses with students without disabilities.
- Auditing or participating in courses with students without disabilities for which the student does not receive regular academic credit.
- Enrollment in non-credit-bearing, nondegree courses with students without disabilities.
- Participation in internships or work-based training in settings with students without disabilities.

Current Regulations: None.

Proposed Regulations: Proposed § 668.231 would define a *comprehensive transition and postsecondary program* by incorporating the statutory provisions, but would add a provision that the program would have to be delivered to students physically attending the institution. The proposed regulations would also clarify that the program must provide opportunities for students with intellectual disabilities to participate in coursework and other activities with students without disabilities.

Reasons: Proposed § 668.231 would incorporate the statutory requirements from section 760 of the HEA except for the proposed addition and clarification described in the preceding *Proposed Regulations* section. Some of the non-Federal negotiators initially opposed the proposed requirement that a comprehensive transition and postsecondary program must be delivered to students physically attending the institution. The negotiators argued that students should have the option of taking distance courses because they might be unable to commute to a campus or because some courses might only be offered online. Other negotiators and experts in the field argued that Congress intended for students with intellectual disabilities to be integrated into campus life as much as possible and did not want to allow distance education to be the sole or main delivery method. The Department does not wish to regulate to preclude all distance courses for students with intellectual disabilities and may permit a limited number of courses to be delivered via distance, as long as the institution explains why it believes the course is applicable to, and benefits, students with intellectual disabilities. Similarly, we wish to clarify that a comprehensive transition and postsecondary program may include an internship for students or other activities that are located off-campus—the physically-attending requirement does not exclude these activities.

With regard to students participating in one or more of the identified activities with students without disabilities, an institution has the flexibility to determine the activity or combination of activities that is best aligned with student needs and interests, as long as students with intellectual disabilities participate in these activities for at least half the time that they are enrolled in the program.

Some non-Federal negotiators suggested that comprehensive transition and postsecondary programs might offer multiple ways for students with intellectual disabilities to participate in campus life beyond those that are delineated in the statute. In response, we propose that a program provide students with opportunities to participate in coursework and other activities with students without disabilities, such as student government, clubs, social events, and sports.

Definition of a Student With an Intellectual Disability (§ 668.231)

Statute: Section 709 of the HEOA added section 760 of the HEA to define *student with an intellectual disability* as a student:

- With mental retardation or a cognitive impairment characterized by significant limitation in intellectual and cognitive functioning and adaptive behavior as expressed in conceptual, social, and practical adaptive skills; and
- Who is currently, or was formerly, eligible for a free appropriate public education (FAPE) (i.e., special education and related services) under the Individuals with Disabilities Education Act (IDEA).

Current Regulations: None.

Proposed Regulations: Proposed § 668.231 would define *student with an intellectual disability* as set forth in the statute, but clarify that a student who was determined eligible for services under the IDEA but was home-schooled or attended private school would also meet this part of this definition.

Reasons: Proposed § 668.231 would incorporate the statutory requirements from section 760 of the HEA except for the proposed clarification regarding students who are home-schooled or attended private school.

While some non-Federal negotiators felt that the statute could be read to include students with intellectual disabilities who are home-schooled or attended a private school but were not determined eligible for special education and related services under the IDEA, the Department does not believe that the HEA provides this flexibility. Under §§ 612(a)(3), 612(a)(10)(A)(ii)(I) and 613(a)(1) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1221e–3, 1406, 1411–1419; 23 CFR part 304), State educational agencies (SEAs) and local educational agencies (LEAs) are required to locate, identify and evaluate all students with disabilities within the jurisdiction of the State and LEA. In addition, under § 614(a)(1)(B) of the IDEA, LEAs and SEAs must assess students for eligibility for special education and related services under the IDEA if requested by the parent. These are ongoing responsibilities that extend to all children residing in the State, or in the jurisdiction of the LEA, including children attending private schools. To qualify for title IV aid pursuant to § 484(s) of the HEA, a student should obtain an IDEA eligibility determination while the student is still age-eligible for IDEA services from, (1) for students attending private elementary and secondary schools, including home

schools if home schools are considered private schools under State law, the LEA in which the private school is located, or (2) for students not attending private elementary and secondary schools, the LEA that is responsible for making available a FAPE to the student (generally, the LEA in which the student resides).

Program Eligibility (§ 668.232)

Statute: Section 485(a)(8) of the HEOA adds section 484(s) to the HEA to establish the eligibility of students with intellectual disabilities who enroll in comprehensive transition and postsecondary programs to receive aid under the Federal Pell Grant, FSEOG, and FWS programs.

Current Regulations: None.

Proposed Regulations: Consistent with current procedures under which an institution adds an additional program, an institution that wishes to offer a comprehensive transition and postsecondary program would have to apply and receive approval from the Secretary under proposed § 668.232. The proposed regulations outline the elements that an institution must include in its application, including:

- A detailed description of the comprehensive transition and postsecondary program, addressing all of the components of the program as defined in proposed § 668.231;
- The policy for determining whether a student enrolled in the program is making satisfactory academic progress;
- A statement of the number of weeks of instructional time and the number of semester or quarter credit hours or clock hours in the program, including the equivalent credit or clock hours associated with noncredit or reduced credit courses or activities;
- A description of the educational credential offered or identified outcome or outcomes established by the institution for all students enrolled in the program;
- A copy of the letter or notice sent to the institution's accrediting agency informing the agency of its comprehensive transition and postsecondary program; and
- Any other information the Secretary may require.

Reasons: Proposed § 668.232 would incorporate the statutory provisions from section 484(s) of the HEA. The Department would use the requested information to determine whether to approve the institution's program for funding under the Federal Pell Grant, FSEOG, and FWS programs.

The requirement that an institution provide a copy of the notice sent to its accrediting agency is intended only to ensure that the accrediting agency is informed that the institution offers or will offer a comprehensive transition and postsecondary program. The accrediting agency would then decide whether to take any actions.

One of the non-Federal negotiators felt that an institution should not have to set up a separate advising and curriculum structure for students with intellectual disabilities. The Department will consider, on a case-by-case basis, allowing an institution to use an existing structure based on the institution's explanation of how that structure is applicable to, and benefits, students with intellectual disabilities.

Other negotiators asked whether the Department would approve a comprehensive transition and postsecondary program developed to serve the needs of a single student, as this is already the practice in the field. The Department will consider, on a case-by-case basis, whether to approve a comprehensive transition and postsecondary program developed to serve the needs of a single student. However, an institution would have to submit a separate application for each comprehensive transition and postsecondary program for which it seeks approval, even if the program is developed for only one student, as each would be considered a separate program.

Student Eligibility (§§ 668.32 and 668.233)

Statute: Section 484(s) of the HEA specifies that a student with an intellectual disability must:

- Be enrolled or accepted for enrollment in a comprehensive transition and postsecondary program for students with intellectual disabilities at an institution of higher education;
- Be maintaining satisfactory progress in the program as determined by the institution, in accordance with standards established by the institution; and
- Meet the student eligibility requirements in sections 484(a)(3), (4), (5), and (6) of the HEA, under which a student must not be in default on any Federal student loans, must have filed a FAFSA, must be a United States citizen or national, and, if the student was convicted of fraud in obtaining funds under this title, must have repaid those funds.

Current Regulations: Section 668.32 describes the requirements for student eligibility for title IV, HEA program assistance. In part, under this section a student must:

- Be enrolled for the purpose of obtaining a degree or certificate;
- Have a high school diploma, a recognized equivalent of a high school diploma, or have passed an ability to benefit test; and
- Be making satisfactory progress according to the institution's published standards for satisfactory progress that satisfy the provisions of § 668.16(e) and, if applicable, those under § 668.34.

Proposed Regulations: Proposed §§ 668.32(n) and 668.233 would provide that a student with intellectual disabilities enrolled in a comprehensive transition and postsecondary program may be eligible for title IV, HEA program assistance under the Federal Pell Grant, FSEOG, and FWS programs if—

- The student is making satisfactory academic progress in accordance with the institution's published standards for students enrolled in the comprehensive transition and postsecondary program; and
- The institution obtains a record from a local or State educational agency that the student is or was eligible for special education and related services under IDEA. If the student's record does not indicate that the student has an intellectual disability, as discussed in paragraph (1) of the definition of a *student with an intellectual disability* in proposed § 668.231, the institution would have to also obtain documentation from another source that identifies the intellectual disability.

Reasons: The proposed regulations would implement the statutory requirements by clarifying that a student with an intellectual disability is exempt from the requirements that he or she have a high school diploma or its equivalent, and is making satisfactory academic progress under § 668.16(e) and § 668.34, if applicable. Also, because a student with an intellectual disability does not have to be enrolled in a degree or certificate program, the student would be eligible for a second Pell Grant in the same award year if the student otherwise qualifies for that grant under proposed § 690.67.

With respect to documentation establishing an intellectual disability, there was some concern among the negotiators that institutions would require updated evaluations that could be costly or cost prohibitive. Proposed § 668.233 would allow institutions to accept the most recent documentation, even if it is more than a few years old. Also, if available in the student's record and to better understand a student's abilities and limitations, we encourage institutions to consider using a student's summary of academic achievements and functional performance, as described in 34 CFR 300.305(e)(3), which includes

recommendations on how to assist the student in meeting the student's postsecondary goals.

Institutional Information (§ 668.43)

Statute: Section 485(a)(I) of the HEA specifies that institutions must disseminate information about special facilities and services available to students with disabilities.

Current Regulations: Section 668.43 requires an institution to provide a description of any special facilities and services available to disabled students.

Proposed Regulations: Proposed § 668.43(a)(7) would change the phrase ''any special facilities and services'' to ''the services and facilities,'' and replace the phrase ''disabled students'' with ''students with disabilities.'' The proposed changes would also clarify that a description of services and facilities for students with disabilities must also contain the services and facilities available for students with intellectual disabilities.

Reasons: The proposed changes reflect changes in terminology in the special education and disability fields. Further, we wanted to clarify that a description of the services and facilities available to students with intellectual disabilities must be included in the description of the services and facilities available to all students with disabilities.

Part 675 Federal Work-Study Programs

Definition of Community Services (§ 675.2)

Adding the Field of Emergency Preparedness and Response

Statute: Section 441 of the HEOA amended the definition of *community services* in section 441(c)(1) of the HEA to include the field of emergency preparedness and response.

Current Regulations: Section 675.2(b) provides the definitions of terms for the FWS Program, including the term *community services.* The definition of *community services* includes a list of possible services in fields such as literacy training and education tutoring that may be considered *community services* under the FWS Program. The definition does not provide a complete list of acceptable services, but highlights certain services that may improve the quality of life for outside community residents, particularly low-income individuals, or solve particular problems related to their needs.

Proposed Regulations: We propose to revise the definition of the term *community services* in § 675.2(b) to include the field of emergency preparedness and response to reflect the statutory definition.

Reasons: This proposed regulatory change is needed to conform the regulatory definition of *community services* with section 441(c)(1) of the HEA.

Conforming FWS Payment Requirements to the Cash Management Regulations (§ 675.16)

Handling Minor Prior-Year Charges

Statute: Under Part E—Need Analysis of the HEA (particularly sections 471 through 473), a student's need for most Title IV, HEA program funds for a period of enrollment during an award year is determined by subtracting the expected family contribution (EFC) and other estimated financial assistance for that same enrollment period during the award year from the student's cost of attendance for the same period. The cost of attendance is based on current award year educational expenses. The EFC is the amount that can reasonably be contributed toward meeting the student's educational expenses for the period of enrollment during the award year for which a need determination is made. The Title IV, HEA funds are awarded to defray the educational costs for the award year.

Current Regulations: Under § 675.16(a)(3)(iv), an institution may use a student's current year FWS compensation to pay for minor prior-award year charges if the charges are less than $100, or the charges are $100 or more and the payment of those charges does not prevent the student from paying his or her current educational costs. In either case, the institution must first obtain the student's written authorization. The cash management requirements in § 668.164(d) for the other title IV, HEA programs allow an institution to use a student's current year title IV, HEA program funds to pay for minor prior-year charges if the charges are not more than $200.

Proposed Regulations: Under the provisions in proposed § 675.16(b)(1)(ii) and (b)(2), the FWS regulations are amended in three ways regarding the use of current award year FWS funds to pay prior award year charges. First, the amount of prior award year charges that could be paid with current award year FWS funds would increase to not more than $200. Second, the FWS provision that allows an institution to pay for prior award year charges of $100 or more would be removed. Finally, we clarify that the $200 limit applies to all title IV, HEA program funds that an institution uses to pay prior-year charges. For example, if an institution uses FWS funds in combination with other title IV, HEA program funds to credit a student's account to satisfy prior award year charges, the total amount of the funds used must be $200 or less. We note that an institution is still required to obtain the student's written authorization to credit FWS to the student's account.

Reasons: The proposed changes are needed to conform the FWS payment regulations to the cash management requirements in § 668.164(d) regarding the prior award year limit. When the Department amended the regulations for minor prior award year charges under § 668.164(d) in November 1, 2007, for the other title IV, HEA programs, we failed to make the conforming change for the FWS Program in § 675.16.

Electronic Disbursements

Statute: The HEA does not address the issue of electronic disbursement of FWS or other Title IV, HEA program funds.

Current Regulations: The current FWS regulations in § 675.16(a) provide that an institution may pay a student by check or similar instrument that the student can cash on his or her own endorsement, by initiating an electronic funds transfer (EFT) to the student's bank account, or by crediting the student's account at the institution. If an institution wishes to make an EFT or credit the student's account at the institution, it must obtain the student's written authorization. The current FWS regulations do not allow an institution to require a student to have a bank account in order to be paid FWS compensation. Also, the current FWS regulations do not address payments made via a stored-value card.

Proposed Regulations: The proposed FWS regulations in § 675.16(a)(1) would adopt the regulations in § 668.164(c) for the direct payment of FWS compensation. The provisions for issuing a check and expanding the use of EFTs to bank accounts that underlie stored-value cards and other transaction devices that already exist for the other title IV, HEA programs would also apply to the FWS Program. The proposed regulations would remove the FWS requirement that an institution obtain a student's written authorization to make an EFT payment and add a provision allowing an institution to issue a stored-value card or similar device. The proposed regulations continue the current requirement that an institution must obtain a student's written authorization to credit FWS compensation to a student's account at the institution for any purpose because

the funds are earnings and holding those funds without the student's permission would be a garnishment of wages. Finally, the proposed FWS regulations would allow an institution to establish a policy requiring students to provide bank account information or open an account at a bank of the student's choosing, as long as this policy does not delay the disbursement of FWS earnings to the student. Thus, if the student does not comply with the policy, the institution must still disburse the funds to the student in a timely manner in another way. Further, an institution is not allowed to refuse to hire a student who does not comply with the policy to provide bank account information or open a bank account, nor to fire him or her for that same reason. This policy is based on section 445(c) of the HEA, which states that an institution may, upon the request of a student, make a direct deposit to the student's account.

Reasons: The proposed regulations eliminate inconsistencies and otherwise harmonize the requirements in the FWS and cash management regulations. Providing consistency among the title IV, HEA programs for making direct payments to students would make the FWS Program easier for institutions to administer and make the process easier for students to understand.

Eliminating Separate Student Authorizations

Statute: The HEA does not address the issue of student written authorizations for crediting FWS funds directly to the student's account at the institution or holding FWS credit balances on behalf of a student.

Current Regulations: Under § 675.16(a), an institution must obtain written authorization from the student to credit the student's account at the institution with FWS funds and to hold a title IV credit balance. The authorization to credit FWS funds to a student's account at the institution must be separate from any other authorization. The FWS written authorization may not be included as part of a list or in combination with other types of authorizations signed by the student, including authorizations for all the other title IV, HEA programs as provided in § 668.165. This requirement for a separate student authorization to credit FWS funds to a student's account also applies to the written authorization required to hold an FWS credit balance for the student.

Proposed Regulations: Under the provisions in proposed § 675.16(d), the FWS written authorization required to credit a student's account at the institution or the written authorization required to hold a credit balance for the student will no longer be required to be separated from other authorizations.

Reasons: The proposed FWS change would allow the administrative collection of the student authorizations required under the FWS Program for crediting student accounts and holding credit balances at the institution to be combined with the student authorizations required in § 668.165 for the other title IV, HEA programs. This combination of student authorizations will make the collection process easier for both the student and the institution.

Terms for the Work Colleges Program (Subpart C of Part 675)

Statute: The amendments made by the HEOA to section 448 of the HEA replace the term *work-learning* each place it appears in the statute for the Work Colleges Program with the term *work-learning-service*. In addition, the name of the *comprehensive student work-learning program* that a work college must have, was changed to the *comprehensive student work-learning-service program*.

Current Regulations: Throughout subpart C of part 674, the current Work Colleges Program regulations refer to the term *work-learning* or the term *comprehensive work-learning programs* and the term *comprehensive student work-learning program* is defined in § 675.41(b).

Proposed Regulations: Under the proposed changes to the regulations in subpart C of part 674, the term *work-learning* is replaced with the term *work-learning-service* each place that it appears. Further, the name of the defined term *comprehensive student work-learning program* in § 675.41(b) would be changed to *comprehensive student work-learning-service program*.

Reasons: This change is needed to conform the wording in the Work Colleges Program regulations to the wording used in the HEA. The addition of the word *service* is important because it recognizes the value of service as an intrinsic element and educational outcome of work that is provided as part of the overall education program at a Work College that benefits the college, the community, and the student. The word *service* that was added as part of the term *work-learning-service* in the HEA and now in the proposed regulations, refers to uncompensated volunteer service or compensated service for work performed for the good of the college community or the external community beyond the campus. It includes work performed in the public interest at a Federal, State, or local public agency, or at a private nonprofit organization.

Additional Standards for the Definition of the Term Work College

Statute: The amendments made by the HEOA to section 448 of the HEA amended the definition of *work college*. The term *work college* was amended by adding additional standards that a public or private nonprofit institution must meet to be eligible for this program. The institution must be a four-year, degree-granting institution and must require at least one-half of all of its full-time students to participate in a comprehensive student work-learning-service program. The institution must continue to have all of its resident students participate in a comprehensive student work-learning-service program. In addition, the institution must require the students to participate in a comprehensive student work-learning-service program for at least five hours each week or at least 80 hours during each period of enrollment, except for summer school, an approved study abroad program, or an externship program. A *period of enrollment* means a semester, quarter, trimester, or a similar period.

Current Regulations: Section 675.41(a) defines the term *work college*.

Proposed Regulations: Under proposed § 675.41(a), the definition of *work college* would now include the requirement that an institution must be a four-year, degree-granting institution. The proposed definition would also provide that the institution must have at least one-half of all of its full-time students participate in the required comprehensive work-learning-service program. In addition, all of the students in that program must participate for a minimum of five hours each week or a minimum of 80 hours during each period of enrollment, except for summer school, an approved study abroad program, or an externship program.

Reasons: The proposed additional requirements are needed to conform the definition of a *work college* to the statutory definition.

Expanding FWS Community Service Jobs (§§ 675.18(g) and 675.26(d)) Promoting Civic Education and Participation Activities

Statute: The amendments made by the HEOA to section 443 of the HEA permit institutions to meet the FWS seven percent community service expenditure requirement by using FWS funds to pay students employed in projects that teach civics in schools, raise awareness of government functions or resources, or increase civic participation.

If an institution decides to place FWS students in a community service project performing civic education and participation activities, it must to the extent practicable:

- Give priority to the employment of FWS students in projects that educate or train the public about evacuation, emergency response, and injury prevention strategies relating to natural disasters, acts of terrorism, and other emergency situations; and
- Ensure that the FWS students performing these projects receive the appropriate training to carry out the required educational services.

The FWS students employed in community service projects performing these civic education and participation activities may be paid for the time spent in training and travel. Further, the FWS students employed in community service projects performing civic education and participation activities may be paid FWS compensation with a Federal share that exceeds the regular 75 percent limit.

Current Regulations: The current FWS regulations do not address and promote civic education and participation activities as a community service project.

Proposed Regulations: Section 675.18(g) would be amended to implement section 443 of the HEA that promotes the use of FWS funds to employ FWS students in community service projects performing civic education and participation activities. The proposed regulations would provide that when a school decides to have FWS students perform these activities, to the extent practicable, it must give priority to the employment of students participating in projects that educate or train the public about evacuation, emergency response, and injury prevention strategies relating to natural disasters, acts of terrorism, and other emergency situations. The institution, to the extent practicable, would also have to ensure that the students receive the appropriate training to carry out the educational services required.

Section 675.26(d) would be amended to implement the requirement in section 443 of the HEA to allow the Federal share of the compensation paid to FWS students performing the civic education and participation activities in community service projects to exceed the regular 75 percent limit. These FWS students may be paid with a Federal share of up to 100 percent.

Reasons: The proposed changes to the FWS regulations are needed to add this new use of FWS funds and to promote the employment of FWS students in community service projects performing civic education and participation activities. Allowing institutions to pay FWS students with a Federal share of up to 100 percent encourages institutions to place students in community service projects performing civic education and participation activities.

We note that the conference language in the HEOA urges FWS participating institutions to improve the availability and quality of community service job information to students and to improve their outreach to community service agencies. The addition of this new use of FWS funds to have students perform civic education and participation activities in community service projects provides an opportunity for an institution to make the above requested improvements and to meet the seven percent community service expenditure requirement.

Flexible Use of FWS Funds (§ 675.18(i))

Paying Students Under Certain Conditions in the Event of a Major Disaster

Statute: The amendments made by the HEOA added a new subsection (d) to section 445 of the HEA. This new provision allows an eligible institution located in any area affected by a major disaster to make FWS payments to disaster-affected students under certain limited conditions. The FWS payments may only be made for the period of time, not to exceed one academic year, in which the disaster-affected students were prevented from fulfilling their FWS work obligations due to the major disaster.

Payments may be made to the disaster-affected students in an amount equal to or less than the amount of FWS wages the students would have been paid had the students been able to complete the work obligation necessary to receive the FWS funds. Payments may not be made to any student who was not eligible for FWS or was not completing the work obligation necessary to receive the FWS funds prior to the occurrence of the major disaster. Any payments made to disaster-affected students must meet the applicable FWS matching requirements, unless the Secretary has waived the matching requirements.

Section 445(d) of the HEA defines the term ''disaster-affected student'' as a student enrolled at the institution who has received the FWS award and earned FWS wages prior to the occurrence of the major disaster, was prevented from working for all or part of the academic year due to the major disaster, and was unable to be reassigned to another FWS job after the major disaster. The amended HEA also provides that the term ''major disaster'' has the meaning as defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)).

Current Regulations: The current FWS regulations do not provide for the flexibility to pay FWS funds to disaster-affected students unable to work due to a major disaster. Under the current regulations, there is no exception to the FWS Program requirement that an FWS student may never be paid FWS funds until the student has performed the work and earned those funds.

Proposed Regulations: Section 675.18 would be amended by adding a new paragraph (i) that allows an institution located in any area affected by a major disaster to make FWS payments to disaster-affected students. However, this one special exception to the basic requirement that an FWS student may not be paid FWS funds until the student has performed the FWS work has very specific conditions that must be met.

To apply this limited flexible use of FWS funds to pay disaster-affected students an institution must be located in an area affected by a major disaster. A major disaster must be declared by the President. The counties or parishes covered by the declaration are provided by the Federal Emergency Management Agency (FEMA).

The FWS payments may only be made for the period of time in which the disaster-affected students were prevented from completing their FWS work obligations due to the major disaster. The period of time cannot exceed one academic year for this purpose. The FWS payments made to disaster-affected students cannot exceed the amount of FWS wages the students would have been paid had these students been able to complete the FWS work obligation necessary to receive the FWS funds. The institution in paying the FWS funds to the disaster-affected students must make the appropriate match for the FWS Federal funds, unless the Secretary has waived the matching requirements.

The disaster-affected students must have been eligible for FWS and awarded FWS prior to the occurrence of the major disaster. The disaster-affected students must have earned FWS funds and be completing the FWS work obligation prior to the occurrence of the major disaster. The disaster-affected students could not have been separated from their FWS employment prior to the occurrence of the major disaster. The major disaster must prevent the FWS students from working for a portion or

all of the academic year. In addition, the disaster-affected students must be unable to be reassigned to other FWS jobs by the institution after the occurrence of the major disaster.

Reasons: The proposed changes to the FWS regulations are needed to add this new flexibility to pay disaster-affected students who are unable to work because of a major disaster. The change would allow the eligible FWS students unable to work due to a major disaster to still receive the FWS funds that they need to help pay for educational costs.

Part 686 Teacher Education Assistance for College and Higher Education (TEACH) Grant Program

TEACH Grant Program

Periods of Suspension (§ 686.41)

Statute: None.

Current Regulations: Section 686.41(a) provides that a TEACH Grant recipient may be granted a suspension of the eight-year period required for completing his or her teaching service obligation, in a low-income school as a highly-qualified teacher in a high-need field, based on a call or order to active military duty. The suspension ends upon the completion of that military service.

Proposed Regulations: A TEACH Grant recipient who is called or ordered to active military duty (or his or her representative) may request a suspension of the eight-year period in increments not to exceed three years. Under proposed § 686.41(a)(2), a request for a suspension of the eight-year period may be granted in one-year increments. Proposed § 686.41(a)(2)(ii) would allow a suspension of the eight-year period for no more than three years. Once the recipient has exceeded the three-year suspension period, the recipient (or his or her representative) may request a discharge of all or a portion of his or her teaching service obligation.

Reasons: The proposed regulations would no longer provide an indefinite delay of the eight-year, service obligation period to a TEACH Grant recipient who is called or ordered to active duty. Instead a TEACH Grant recipient that exceeds the three-year suspension period could qualify for a discharge of all or part of his or her teaching service obligation as provided in proposed § 686.42. The proposed discharge provides a greater benefit than a suspension of the service obligation to a TEACH Grant recipient who is called or ordered to active military duty for extended periods.

Discharge of Agreement To Serve (§ 686.42)

Statute: Section 420N(d)(2) of the HEA, as amended by the HEOA, requires the Secretary to establish categories of extenuating circumstances under which a TEACH Grant recipient who is unable to fulfill all or a portion of his or her teaching service obligation may be excused from fulfilling that portion of the teaching service obligation.

Current Regulations: None.

Proposed Regulations: As provided in proposed § 686.42(c)(2), the recipient may qualify for a proportional discharge of his or her service obligation based on the number of years the recipient has been called or ordered to active military duty. The recipient would qualify for a one-year discharge if the call or order to active military duty is for more than three years. Similarly, the recipient would qualify for a two-year, three-year, or total discharge if the call or order to active military duty is for more than four, five, or six years, respectively.

To obtain the discharge, the recipient (or his or her representative) would be required under § 686.42(c)(3) to provide the Secretary:

- A written statement from his or her commanding or personnel officer certifying that the recipient is on active duty in the Armed Forces, the date on which that service began, and the date the service is expected to end; and
- A copy of his or her official military orders and military identification.

The term *Armed Forces* would be defined in § 686.42(c)(4) to mean the Army, Navy, Air Force, Marine Corps, and Coast Guard.

Finally, under proposed § 686.42(c)(5), the Department would notify a TEACH Grant recipient or his or her representative of the decision reached on his or her request for a partial or full discharge of the teaching service obligation. The grant recipient would be responsible for fulfilling any teaching service obligation that is not discharged.

Reasons: The proposed regulations in § 686.41 implement the statutory requirement in section 420N(d)(2)of the HEA by providing for a discharge of a teaching service obligation based on a call or order to active military duty.

Under current § 686.42(a) and (b), a TEACH Grant recipient may have his or her teaching service obligation discharged upon the recipient's death or if he or she becomes totally and permanently disabled. The Department believes it would be appropriate to also provide a discharge of a TEACH Grant recipient's teaching service obligation in cases when the grant recipient cannot comply with his or her agreement to teach because of a call or order to active military duty for an extended period of time. TEACH Grant recipients who are called to active military duty for an extended period of time may return from their military service with teaching credentials that are no longer valid, may require retraining to meet the standards established by the State before they can be placed in a teaching position, or may otherwise encounter difficulties in obtaining a teaching position that could be used to fulfill their teaching service obligation.

Several non-Federal negotiators believed that additional extenuating circumstances should also be considered. Some of them suggested that we expand the categories of extenuating circumstances to include economic hardship. Noting that teachers were being laid off in a number of areas, they argued that TEACH Grant recipients might not be able to find full-time employment in their high-need fields due to the current economic conditions, which they felt might continue for some time. While we are sympathetic to these concerns, the Department believes that, because a TEACH Grant recipient has eight years to complete a four-year teaching service obligation, he or she should still be able to fulfill that obligation notwithstanding the fact that he or she may encounter a temporary hardship in locating a suitable position.

Part 690 Federal Pell Grant Program

Two Federal Pell Grants in an Award Year (§§ 690.63(h), 690.64, and 690.67)

Statute: Section 401(b)(5) of the HEA, as amended by the HEOA, provides that a student may receive up to two consecutive Federal Pell Grant Scheduled Awards during a single award year if the student is enrolled at least half-time for more than one academic year, more than two semesters, or the equivalent time during a single award year. The student must also be enrolled in a certificate, associate degree, or baccalaureate degree program. Section 484(s)(3) of the HEA provides the authority to waive this provision for students with intellectual disabilities who enroll in a comprehensive transition and postsecondary program.

Student Eligibility for a Second Scheduled Award (§ 690.67(a))

Current Regulations: The current regulations provide that the Secretary announces in the **Federal Register** whether an institution may award up to

a second Federal Pell Grant Scheduled Award to a student in a particular award year. An institution may award up to a second Scheduled Award if a student is enrolled as a full-time student in an eligible program that leads to an associate or baccalaureate degree and the student has completed the credit hours and weeks of instructional time in an academic year leading to his or her associate or baccalaureate degree program. If an institution awards a student a second Scheduled Federal Pell Grant award, the institution must make that award to all students who qualify.

Proposed Regulations: The proposed regulations would amend § 690.67 to provide that a student would be eligible for a second Scheduled Award if the student has earned in an award year at least the credit or clock hours of the first academic year of the student's eligible program, and is enrolled as at least a half-time student in a program leading to a bachelor's or associate degree or other recognized educational credential (such as a postsecondary certificate or diploma), except as provided in proposed 34 CFR part 668, subpart O for students with intellectual disabilities.

Reasons: We are proposing these requirements to encourage a student to accelerate the completion of his or her program of study within a shorter time period than the regularly scheduled completion time, i.e., the published length of the program. Providing up to two Federal Pell Grants to students for attendance in all payment periods in an award year supports this acceleration. We believe that, by encouraging the student to complete the credit or clock hours in the academic year expeditiously, the benefit of most students' second Scheduled Awards would be maximized.

We initially proposed that a student would be required to complete the credit or clock hours of the first academic year before receiving a second Scheduled Award or to complete the credit or clock hours of the first academic year in the payment period for which he or she is receiving a payment from the second Scheduled Award in the award year. We further proposed to amend § 690.80 to provide that if the projected enrollment status of a student enrolled in a term-based program changed at any time during a payment period in which the student is receiving a payment from a second Scheduled Award in an award year, the institution would be required to recalculate the student's payment for the payment period. This recalculation requirement would ensure that a student who is not accelerating does not receive the benefit of a payment from a second Scheduled Award.

We did not propose any similar recalculation requirement for clock-hour and nonterm-credit-hour programs. A recalculation requirement would not be relevant to these programs. A student enrolled in one of these programs must successfully complete the credit or clock hours of a payment period to progress to the next payment period. Thus, a student is required to earn the credit or clock hours of the first academic year to advance to a payment from a second Scheduled Award.

Some of the non-Federal negotiators objected to the recalculation requirements for term-based programs. These non-Federal negotiators were concerned that the requirements would be administratively burdensome. They also objected to the difference in treatment compared to the requirements for recalculations for payments from a student's first Scheduled Award in the award year. In addition, some of these non-Federal negotiators believed that the satisfactory academic progress standards in 34 CFR 668.16(e), as well as the new limitation under section 401(c)(5) of the amended HEA that a student's lifetime eligibility is limited to nine Scheduled Awards, provided sufficient minimum standards for ensuring a student's advancement in his or her eligible program. We are not convinced that the satisfactory progress standards at most institutions are robust enough for this purpose or that the lifetime limitation on eligibility is short enough to provide a sufficient basis for encouraging students to complete their eligible programs in less than the regularly scheduled completion time.

As a result of the non-Federal negotiators objections to the requirements for recalculations for changes in enrollment status, we proposed an alternative approach. Instead of recalculation, we proposed that a student in a term-based program must earn the credit or clock hours in an academic year before the student would be eligible for any payment from a second Scheduled Award. This proposal would be similar to the current treatment of students in clock-hour and nonterm-credit-hour programs.

Some of the non-Federal negotiators objected to the proposed alternative approach. They did not believe it was appropriate to require a student in a term-based program to earn the credit or clock hours of the first academic year for the student to be eligible for a second Scheduled Award. In addition, the non-Federal negotiators disagreed with our understanding that acceleration means that a student would complete his or her eligible program in less than the regularly scheduled period for completion. The non-Federal negotiators believed that acceleration meant that a student was earning additional credit or clock hours beyond the first academic year in the award year without respect to whether the additional hours were sufficient for the student to advance significantly toward the completion of his or her eligible program. Some of these non-Federal negotiators believed that the statute intended acceleration to apply only on a student-by-student basis. For example, a student would be accelerating by completing his or her eligible program in a shorter period of time than the student would otherwise have completed the program without reference to any objective standard. We do not agree. We do not believe the statute limits the implementation of these requirements in this manner, nor do we believe that adopting the non-Federal negotiators' position would provide the necessary encouragement for a student to accelerate the completion of his or her educational program.

As an alternative to our proposal, the non-Federal negotiators again advanced their belief that the satisfactory progress standards and the nine-Scheduled-Award limit were sufficient. However, they did not provide any further information on how these requirements would serve to advance a student's acceleration in his or her eligible program.

Consensus was not reached and the Department decided to move forward with the proposal to require a student to earn the credit or clock hours in the (first) academic year before the student would be eligible for any payment from a second Scheduled Award in the award year.

Transfer Students (§ 690.67(b))

Current Regulations: None.

Proposed Regulations: The proposed regulations would provide that an institution must determine the credit or clock hours that a transfer student has earned at a prior institution during the award year based on the Federal Pell Grant disbursements that the student received at the prior institution during the award year in relation to the student's Scheduled Award at that prior institution. The credit or clock hours that the student would be considered to have earned would be in the same proportion to credit or clock hours in the current institution's academic year as the disbursements that the student has received at the prior institution in the award year are in proportion to the

student's Scheduled Award at the prior institution.

If the student's first Scheduled Award has been disbursed at institutions previously attended, the student would be considered to have completed the credit or clock hours of the first academic year in the award year. If less than the first Scheduled Award has been disbursed at prior institutions, the student's credit or clock hours earned would be determined by multiplying the payments of the student's Scheduled Award disbursed at a prior institution during the award year by the number of credit or clock hours in the current institution's academic year and dividing the product of the multiplication by the amount of the Scheduled Award at the prior institution. If the student previously attended more than one institution in the award year, the institution would add the results of the calculation for each prior institution.

For example, a transfer student received $2,000 of his or her first Scheduled Award of $4,000 while enrolled at a prior institution. The student's current institution defines its academic year, in part, as 24 semester hours. To determine the number of credit hours the student is considered to have earned in the award year at the prior institution, the current institution performs the following calculation:

$$\frac{\$2{,}000 \text{ disbursement} \times 24 \text{ semester hours}}{\$4{,}000 \text{ Scheduled Award}} = 12 \text{ semester hours}$$

In this case the student would be considered to have earned 12 semester hours of the first academic year in the award year.

Reasons: We are proposing these changes because we believe that they limit the administrative burden for institutions in implementing the requirements for determining the eligibility of transfer students.

During negotiated rulemaking, the non-Federal negotiators noted that our initial proposal did not address the eligibility status of transfer students. As a result, we proposed that, unless the institution had information to the contrary such as a transcript from the other institution, an institution could determine the credit or clock hours that a transfer student earned at another institution during the award year based on the Federal Pell Grant disbursements that the student received at the other institution during the award year in relation to the student's Scheduled Award at that institution. Many of the non-Federal negotiators were concerned about the difficulties for institutions administering the Federal Pell Grant Program. Specifically, the non-Federal negotiators were concerned that transcripts that might be in the registrar's office might not always be readily available to the financial aid office in a form or process conducive to implementing these provisions.

Based on the non-Federal negotiators' concerns, we have revised our proposal to provide that an institution would rely solely on assuming the credit or clock hours earned in an award year based on the Federal Pell Grant disbursements received from the student's Scheduled Award at another institution.

Special Circumstances (§ 690.67(c))

Current Regulations: None.

Proposed Regulations: The proposed regulations would provide that a financial aid administrator may waive the requirement that a student complete the credit or clock hours in the student's first academic year in the award year if the administrator determines that the student was unable to complete the clock or credit hours in the student's first academic year in the award year due to circumstances beyond the student's control. The financial aid administrator would be required to make and document the determination on an individual basis. The proposed regulations also provide examples of circumstances that may be considered beyond the student's control, such as withdrawing from classes due to illness, and those that would not be considered beyond the student's control, such as failing to register for a necessary class to avoid a particular instructor.

Reasons: During negotiated rulemaking, the non-Federal negotiators noted that our initial proposal did not provide any authority for a financial aid administrator to consider whether there were special circumstances affecting a student's ability to complete the credits or clock hours to be eligible for a payment from a second Scheduled Award. We agree.

Nonapplicable Credit or Clock Hours (§ 690.67(d))

Current Regulations: None.

Proposed Regulations: We are proposing that, in determining a student's eligibility for a second Scheduled Award in an award year, an institution may not use credit or clock hours that the student received based on Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or similar competency measures.

Reasons: A student's eligibility for a second Scheduled Award is based, in part, on the student's progress in earning the credits or clock hours of the first academic year in the award year. This provision ensures that only those credits or clock hours earned in the award year are considered in determining the student's eligibility.

Payment Period in Two Award Years (§ 690.64)

Current Regulations: Under current § 690.64, if a payment period is scheduled to occur in two award years, an institution must consider this ''crossover'' payment period to occur entirely in one award year. In general, an institution may assign a crossover payment to either award year. The assignment, for example, may be on a student-by-student basis, or the institution may establish a policy of assigning the crossover payment period of all students to the same award year. If more than six months of a crossover payment period are scheduled to occur within one award year, the institution must assign the payment period to that award year.

Proposed Regulations: Under proposed § 690.64, if a student is enrolled in a crossover payment period as a half-time or less-than-half-time student, the current requirements generally would apply.

If a student is enrolled as a three-quarter-time or full-time student, an institution must consider the payment period to be in the award year in which the student would receive the greater payment for the payment period based on the information available at the time that the student's Federal Pell Grant is initially calculated. If the institution subsequently receives information that the student would receive a greater payment for the payment period by reassigning the payment to the other award year, the institution would be required to reassign the payment to the award year providing the greater payment.

A student may request that the institution place the payment period in the award year that can be expected to

result in the student receiving a greater amount of Federal Pell Grants over the two award years in which the payment period is scheduled to occur. If the student makes that request, the institution must assign the payment period to that award year.

Reasons: To the extent practicable, we believe that a crossover payment period should be assigned in a way that maximizes a student's eligibility over the two award years in which the payment period is scheduled to occur.

Initially, we proposed that a crossover payment period should be assigned to the award year in which the student receives the greater payment for the payment period based on the information available to the institution at the time of disbursement. If, subsequent to that date, the institution determines that the student would receive a greater payment for the payment period by reassigning the payment to the other award year, the institution may reassign the payment period to the other award year.

The non-Federal negotiators objected to the mandatory assignment of a crossover payment period to the award year with the higher payment. They objected because, based on the student's enrollment status in a term-based program, there may be a decrease in the overall amount the student would receive for the two award years of the crossover payment period. For example, a student is enrolled in a traditional semester-based program with an academic year that is defined, in part, as 24 semester hours. The student attends half-time, 6 semester hours, for a summer term that must be assigned to the second award year due to the higher payment and enrolls for 12 semester hours in the fall semester. The student would not have earned the semester hours of the first academic year at the end of the fall semester. When the student enrolls full-time in the spring semester, the student is not yet eligible for a payment from the second Scheduled Award. Thus, the student would receive only the remaining one-fourth of his or her first Scheduled Award, instead of a full payment of one-half of a Scheduled Award. However, if the student's summer crossover payment period were assigned to the first award year of the crossover payment period, the student would be eligible for a full payment of one-half of a Scheduled Award for that following spring semester. The difference for the spring semester between a payment of one-fourth of a Scheduled Award under the first approach, and one-half of a Scheduled Award under the second approach, would usually more than make up for the generally smaller amount that the student would receive for the summer term if it were assigned to the first award year.

In addition, the non-Federal negotiators believed that determining the higher payment for the crossover payment period at the time of disbursement created significant administrative difficulties, since the higher disbursement amount might be determined not only by a change in the Scheduled Award for the award year, but also by a change in a student's expected family contribution (EFC). As an alternative, they suggested that the determination of the higher amount be set based solely on the higher Payment or Disbursement Schedule. They believed that this approach would not require a financial aid administrator to track changes in a student's EFC.

As a result of the non-Federal negotiators' concerns regarding the assignment of crossover payment periods for term-based programs, we provided an alternative proposal that is the basis for these proposed regulations. In the case of a half-time student or less-than-half-time student, we do not believe the difference in the payments from each award year for a crossover payment period will usually be a significant amount. In these situations, we do not believe it would be necessary to mandate assignment based on the higher payment. In addition, in those circumstances where the assignment by the institution may not be to the student's advantage, the student may request a determination by the institution of the assignment that would provide the student the greater amount of Federal Pell Grants over the two award years. The institution must comply with the student's request and must reassign the crossover payment period if the reassignment would be expected to provide the student the greater amount of Federal Pell Grants over the two award years.

With regard to a student enrolled at least three-quarter-time, we believe that, generally, a student would significantly benefit from a crossover payment period being assigned to the award year in which the student would receive the greater payment for the payment period. If a student is enrolled at least three-quarter-time in a crossover payment period that is assigned to the second award year, the student would generally be able to complete the credit hours of an academic year in the next semester or next two quarters by taking slightly more than the minimum course load required for a full-time student and would be able to qualify for a full payment from the second Scheduled Award in the subsequent spring term. As in the case of a student enrolled half-time or less, the student may request that the institution assign the crossover payment period to the award year that would be expected to provide the student the greater amount of Federal Pell Grants over the two award years, and the institution must comply with the student's request.

Some of the non-Federal negotiators were concerned that the time for a determination of the award year to which a crossover payment period must be assigned may prevent institutions from closing out the earlier of the two award years in which the crossover payment period is scheduled to occur. They suggested that the proposed regulations include a provision for a deadline for such determinations. We agree that an institution must be able to close out the earlier award year in a timely manner, but we do not believe a specific reference is necessary in these proposed regulations. Sections 690.12, 690.61(b), and 690.83 and 34 CFR part 668.60 already provide the necessary authorities to establish deadlines for closing out application processing and Federal Pell Grant financial reporting for an award year. If a student's higher payment for a crossover payment period is from the earlier award year, the application and financial reporting deadlines would still be applicable. If the determination occurred subsequent to those deadlines, no further action would be required of the institution. If a student's higher payment for a crossover payment period is from the later award year, the applicable deadlines would be those for the later award year.

The Department specifically invites public comment on the proposal to require institutions to initially place the crossover payment period in the award year that results in the payment of the higher amount to a student enrolled at least three-quarter-time (and to allow the student to request that the payment period be placed in the other award year if that placement would be expected to result in the student receiving a greater amount of Federal Pell Grant aid over the two award years in which the payment period is scheduled to occur). Further, the Department is interested in data from past practices and experiences of institutions in the placement of crossover payment periods and in whether, and to what degree, this proposal will burden or otherwise adversely affect institutions' administration of the Federal Pell Grant Program.

Payment From Two Scheduled Awards (§ 690.63(h))

Current Regulations: None.

Proposed Regulations: Under § 690.63(h) of the proposed regulations, if a student is eligible for the remaining portion of a first Scheduled Award in an award year and for a payment from the second Scheduled Award, the student's payment would be calculated using the annual award for his or her enrollment status for the payment period. The student's payment would be the remaining amount of the first Scheduled Award being completed plus an amount from the second Scheduled Award in the award year up to the total amount of the payment for the payment period.

Reasons: In certain circumstances, a student may, within the same payment period, be completing his or her eligibility for the remaining balance of the first Scheduled Award in the award year while also having eligibility to receive a payment from the second Scheduled Award. We have identified two circumstances in which a student may be paid from two Scheduled Awards in a payment period. One circumstance would be if the institution determined, under proposed § 690.67(c), that a student was unable to earn the credits in the first academic year due to special circumstances beyond the control of the student. The other circumstance would be that a student completed the hours of the first academic year but had not received all of his or her first Scheduled Award. This provision would provide guidance to institutions in calculating a student's payment for the payment period in these circumstances and would ensure that eligible students receive their awards.

Maximum Federal Pell Grant for Children of Soldiers (§ 690.75(e))

Statute: Section 401(f)(4) of the HEA provides that a student whose parent or guardian died as a result of performing military service in Iraq or Afghanistan after September 11, 2001, is deemed to have a zero expected family contribution (EFC) for purposes of the Federal Pell Grant Program. The HEA further directs the Secretary of Veterans Affairs and the Secretary of Defense to provide necessary information to the Secretary of Education to carry out this provision.

Current Regulations: None.

Proposed Regulations: Under proposed § 690.75(e), a student whose parent or guardian was a member of the Armed Forces of the United States and died as a result of performing military service in Iraq or Afghanistan after September 11, 2001, would automatically receive a zero EFC for purposes of the Federal Pell Grant Program if he or she was under 24 years old or enrolled in an institution of higher education at the time of the parent's or guardian's death.

Reasons: These proposed regulations would implement the statutory provisions. Some of the negotiators objected to our initial proposal that a student must have an EFC in the numerical range that would make a student eligible for a Federal Pell Grant to qualify for a maximum Federal Pell Grant. The negotiators believed that the Secretary would be adding an additional student eligibility requirement that the statute did not provide. Based on the non-Federal negotiators objections and our belief that any student should receive a zero EFC if the student's parent or guardian died as a result of performing military service in Iraq or Afghanistan after September 11, 2001, we removed the proposal that a student must have an initial Federal Pell Grant EFC that makes him or her eligible in order to qualify for a zero EFC under this provision.

The non-Federal negotiators also objected to the Secretary's position that an eligible student would be considered to have a zero EFC rather than the maximum Federal Pell Grant Scheduled Award. We do not agree. The statute explicitly states that an eligible student is deemed to have an EFC of zero.

We are not proposing any regulations in relation to the Secretary of Veterans Affairs and the Secretary of Defense providing the necessary information to the Secretary of Education to carry out this provision, nor will this provision require any additional questions on the Free Application for Federal Student Aid (FAFSA). Once a student completes the FAFSA, the Secretary of Education will perform a data match with the Department of Defense and the Department of Veterans Affairs to confirm that the student had a parent or guardian who died as a result of performing military service in Iraq or Afghanistan after September 11, 2001.

A tentative consensus was reached on these proposed regulations during the negotiations.

Part 692 Leveraging Educational Assistance Partnership Program

LEAP Program—Non-Federal Share (§ 692.10)

Statute: Section 415C(b)(10) of the HEA, as amended by the HEOA, provides that the non-Federal share of the amount of student grants or work-study jobs under the LEAP Program must be from State funds for the program and no longer requires that the non-Federal share must be from a direct appropriation of State funds.

Current Regulations: Section 692.10(b) references ''State-appropriated funds'' in the provisions concerning how the Secretary determines the number of students deemed eligible for purposes of calculating State allotments under § 692.10(a).

Proposed Regulations: Proposed § 692.10(b) would remove references to State funds being appropriated funds and would make technical corrections in § 692.10(a) to reflect that multiple programs are funded under part 692.

Reasons: This proposal is necessary to implement section 415C(b)(10) of the HEA, as amended by the HEOA.

Several members of the LEAP/GAP subcommittee raised concerns regarding whether we should define the term ''State funds'' to clarify this change to the nature of the program's matching funds. We did not agree that a definition was necessary. During the subcommittee discussions, we noted that the term ''State funds'' only refers to cash funds, and this cash may be from State-appropriated funds or may be from dedicated State revenues such as revenues from a State lottery or tuition revenues at a State's public institutions of higher education used to provide grant aid. The term ''State funds'' would not include in-kind support to a student such as a tuition waiver at a public institution of higher education. ''In-kind'' support is not cash. If a State were to choose to use tuition revenues at public institutions, or some other sources of State cash, to meet its non-Federal share, use of this cash may affect information that the State must provide in its application to participate in the LEAP and GAP programs in addition to being included in the amount of funds reported for the non-Federal share.

In addition, discussions of the LEAP/GAP subcommittee noted that, in accordance with 34 CFR 80.24 of the Education Department General Administrative Regulations (EDGAR), other Federal funds generally may not be used to meet a State's non-Federal share nor may a State use the same non-Federal funds to meet the non-Federal share of more than one Federal program. For example, tuition revenues at a public institution used to meet the non-Federal share of the LEAP Program may not be used by the institution to meet the matching requirement of the FSEOG Program.

Notification to Students of LEAP Grant Funding Sources (§ 692.21(k))

Statute: Section 415C(b)(11) of the HEA requires that a State notify eligible students that grants under the LEAP Program are (1) LEAP Grants and (2) are funded by the Federal Government, the State, and, where applicable, other contributing partners.

Current Regulations: None.

Proposed Regulations: Proposed § 692.21(k) would require that the State program notify eligible students that grants under the LEAP Grant Program are (1) LEAP Grants and (2) are funded by the Federal Government, the State, and, where applicable, other contributing partners.

Reasons: The proposed regulations generally reflect the statutory language. Some LEAP/GAP subcommittee members questioned whether the regulations should reflect the extent to which States had flexibility in implementing this provision. While we noted in the discussions with the subcommittee that our intent is to provide maximum flexibility to the States in implementing this provision, we believe the statutory language as used in the proposed regulations inherently sets certain minimum standards.

As was discussed by the subcommittee members, the State would need to ensure that students who receive a LEAP Grant are aware of the source of those funds. A State would need to establish a policy that would define the term ''eligible student,'' the State would use the policy to identify the students that the State would notify in accordance with the proposed regulations. A State may consider an ''eligible student'' to be all students submitting an application, thus including potentially eligible students; we believe that this approach would minimize the State's administrative burden. A State may consider an ''eligible student'' to be students awarded LEAP Grants, or, at a minimum, recipients of LEAP Grants. Also, under the proposed regulations, notifications must be to individual students rather than general notifications; a State may use electronic media; and a State may rely on institutions as the agent of the State to provide the notifications.

Some subcommittee members were concerned with whether it would be appropriate to revise the notification to say that the LEAP Grant ''may be funded'' by Federal, State, or, for purposes of the GAP Program, other contributing partners. We do not believe such an alteration is appropriate or necessary. The language in the required notice would accurately describe, for example, a grant that consisted solely of State funds or solely of Federal funds. In some cases, a State may not determine actual LEAP recipients at the time State grants are made, for example, if a State selects students considered to have received a LEAP Grant after the award year has ended. In this circumstance, the State would be expected to provide notices at least to all State grant recipients.

In general, these same considerations apply to notifications for LEAP Grants made under the GAP Program in accordance with proposed § 692.100(a)(8).

Grants for Access and Persistence Program (Subpart C of Part 692 Consisting of §§ 692.90 Through 692.130)

Statute: Section 415E of the HEA, as amended by the HEOA, authorizes the Grants for Access and Persistence (GAP) Program to assist States in establishing partnerships to provide eligible students with LEAP Grants under GAP to attend institutions of higher education. The GAP Program replaces the SLEAP Program previously authorized by section 415E of the HEA.

Current Regulations: None.

Proposed Regulations: Under proposed part 692, subpart C, §§ 692.90 through 692.130, we are proposing the regulations necessary to implement the GAP Program. The proposed regulations would—

- Describe the definitions and other regulations that would apply to the GAP Program (See § 692.92);
- Provide the requirements for participation in the GAP Program by students, States, degree-granting institutions of higher education, early information and intervention, mentoring, or outreach programs (early intervention programs), and philanthropic organizations or private corporations (See § 692.93);
- Describe the requirements a State must satisfy, as the administrator of a partnership with institutions of higher education, early intervention programs, and philanthropic organizations or private corporations, to receive GAP Program funds (See § 692.94);
- Describe the requirements that a State must meet to receive an allotment under this program, including submitting an application on behalf of a partnership and serving as the primary administrative unit of the partnership (See § 692.100);
- Describe the responsibilities of the members of a State partnership in a State that receives a GAP allotment; (See § 692.101)
- Describe how the Secretary would allot funds to the States (See § 692.110);
- Provide that the State must use at least 98 percent of the Federal funds received under the GAP Program to fund LEAP Grants under GAP and may use up to two percent of the Federal funds received for administrative expenses such as the establishment of a partnership, early notification to potentially eligible students and their families of their potential eligibility for student assistance including LEAP Grants under GAP, and issuing to students preliminary award notifications (See § 692.112);
- Describe the requirements for funds matching the Federal allotment under the GAP Program (See § 692.113);
- Describe the requirements for student eligibility under the GAP Program including that the student meets the relevant eligibility requirements in 34 CFR 668.32; has graduated from secondary school or, for a home-schooled student, has completed a secondary education; has financial need for a grant; and meets any additional requirements that the State may require for receipt of a LEAP Grant under GAP (See § 692.120);
- Provide that a State may impose reasonable time limits for a student to complete his or her degree (See § 692.120(c)(2)); and
- Describe how a participating institution may request a waiver of statutory or regulatory requirements that would inhibit the ability of the institution to successfully and efficiently participate in the activities of the partnership (See § 692.130).

Reasons: These proposed regulations are necessary to implement the provisions of section 415E of the HEA, as amended by the HEOA.

Early Intervention Programs (§§ 692.94(a)(2)(ii), and 692.101(c))

Statute: Section 415E(c)(3) provides that a State agency apply for a GAP allotment with, among others, early intervention programs located in the State. Section 415E(c)(4)(C) requires that an early intervention program in a partnership must provide direct services, support, and information (direct services) to participating students.

Current Regulations: None.

Proposed Regulations: Proposed § 692.94(a)(2)(ii) provides that a State applying for a GAP allotment must establish a partnership that includes new or existing early intervention programs. Under proposed § 692.101(c), an early intervention program

administered by a State or private organization is eligible to establish a partnership under the GAP Program, if the program provides direct services, support, and information to participating students.

Reasons: These proposed regulations are necessary to implement section 415E(c)(3) of the HEA and to clarify what is considered an eligible early intervention program.

Members of the LEAP/GAP subcommittee were concerned that the proposed regulations did not define the direct services that would be expected. We did not believe such an expansion of the regulations is necessary but agreed to provide further clarification. Under these proposed regulations, early intervention services would include, but would not be limited to, direct services such as after-school and summer-school tutoring, test preparation, assistance in obtaining summer jobs, career mentoring, a summer-bridge component, i.e., a precollege campus experience, and academic, personal and career counseling. These services may be provided through electronic media if the electronic media would be appropriate to the direct service provided and would interactively and directly engage individual students. Disseminating literature, or providing informational Web sites, would not qualify as direct services.

Members of the LEAP/GAP subcommittee also questioned the minimum number of early intervention programs that must be in a State partnership. Under these proposed regulations, a State partnership would be required to have more than one program that offers an early intervention component. Section 415E(c)(3) of the HEA, which the regulations mirror, refers to early information and intervention, mentoring, or outreach programs, suggesting that more than one of these types of programs must be included in the GAP Partnership. We believe the proposed regulations are consistent with the statute. A State or private organization that has a single early intervention program that includes several components or programs within its structure would satisfy the requirement of having more than one early intervention program.

Persistence to Degree Completion (§ 692.100(a)(6))

Statute: Section 415E(c)(1)(B)(vi) of the HEA provides that a State's application for a GAP allotment must include a description of the steps the State would take to ensure that students who receive LEAP Grants under GAP would persist to degree completion.

Current Regulations: None.

Proposed Regulations: Under proposed § 692.100(a)(6), a State must include in its application the steps it plans to take to ensure, to the extent practicable, that students who receive a LEAP Grant under GAP would persist to degree completion.

Reasons: Proposed § 692.100(a)(6) is necessary to implement section 415E(c)(1)(B)(vi) of the HEA.

Some members of the LEAP/GAP subcommittee believed that the proposed regulations should directly address eligible students attending nonparticipating institutions of higher education. We do not agree. For a State that provides a LEAP Grant under GAP to an eligible student attending a nonparticipating institution of higher education, we would expect the State to obtain a signed assurance from the nonparticipating institution. The nonparticipating institution would assure the State that it would follow the State's plan established in the State's GAP application.

Notification to Students of LEAP Grant Funding Sources (§ 692.100(a)(8))

Statute: Section 415E(c)(1)(B)(viii) of the HEA requires that a State notify eligible students that grants are (1) LEAP Grants and (2) are funded by the Federal Government; the State; and, where applicable, other contributing partners.

Current Regulations: None.

Proposed Regulations: Under proposed § 692.100(a)(8) a State GAP Program is required to notify eligible students that the grants they receive under GAP are LEAP Grants and that the grants are funded by the Federal Government; the State; and where applicable, other contributing partners.

Reasons: Section 415E(c)(1)(B)(viii) of the HEA for the GAP Program, which these proposed regulations implement, is basically the same as section 415C(b)(11) of the HEA for the LEAP Program. The reasons for these proposed regulations are the same as those reasons described for the LEAP Program proposed regulations as discussed under proposed § 692.21(k).

For a LEAP Grant under GAP, a State may include this notification in the award notification required under proposed § 692.111(e). The notifications would apply to LEAP Grants under GAP that are funded by in-kind contributions as well as those funded by the Federal allotment or cash contributions to the non-Federal share.

Recruiting Eligible Students (§ 692.101(b)(2))

Statute: Section 415E(c)(4)(B)(i)(I) of the HEA provides that an institution of higher education in a GAP partnership must recruit and admit participating qualified students and provide additional grant aid as agreed to with the State agency.

Current Regulations: None.

Proposed Regulations: Under proposed § 692.101(b)(2), a degree-granting institution of higher education that is in a partnership under the GAP Program must recruit, admit, and provide institutional grant aid to participating eligible students as agreed to with the State agency.

Reasons: The proposed regulations generally reflect the language in section 415E(c)(4)(B)(i)(I) of the HEA. Some LEAP/GAP subcommittee members were concerned that the regulations may adversely affect the admissions standards of participating institutions. We believe that under these proposed regulations institutions and States would have broad discretion regarding what may be included in an agreement, *e.g.,* there is no requirement that an institution must waive its admissions standards.

GAP and SLEAP Allotments (§§ 692.70 and 692.110)

Statute: Section 415E(b) of the HEA, as amended by the HEOA, provides that the Secretary makes an allotment under the GAP Program to each State that submits an application to meet the costs of the Federal share of the State's GAP Program. The statute requires that, in making a continuation award for a State, the Secretary would make an allotment to the State that is not less than the allotment made to the State in the previous fiscal year and further provides that the Secretary give priority to a State that applies for an allotment in partnerships with degree-granting institutions whose combined full-time enrollment represents a majority of all students attending institutions of higher education in the State.

Section 415E(g) of the HEA, as amended by the HEOA, provides that the LEAP Program provisions that are not inconsistent with GAP requirements apply to GAP.

For the programs authorized under part A, subpart 4 of title IV of the HEA, including the GAP Program, section 415B of the HEA provides that allotments are based on the ratio that the number of eligible students in a State bears to the number of eligible students in all the States except that no State may receive less than the State

received for fiscal year 1979 (1979–1980 award year). Section 415B of the HEA further provides that any allotted funds not required by a State may be realloted to other States in proportion to the original allotments to these other States.

Section 415A(b) of the HEA, as amended by the HEOA, provides that the amount of the annual appropriation for the LEAP and GAP programs that is in excess of $30,000,000 must be made available to carry out the GAP Program.

Section 415E(j) of the HEA, as amended by the HEOA, provides that for the two-year period that begins on August 14, 2008, the date of enactment of the HEOA, a State may continue to make grants under the SLEAP Program, i.e., through the 2010–2011 award year.

Current Regulations: There are no current regulations for the GAP Program. Section 692.70 provides that funds are allotted to States applying under the SLEAP Program in accordance with § 692.10.

Proposed Regulations: Proposed § 692.110(a)(1) would apply to the GAP Program the allotment formula authorized under section 415B of the HEA and used to allot a State's Federal LEAP funds under § 692.10(a) for a fiscal year.

Proposed § 692.110(a)(2) would provide priority to qualifying States by increasing the number of eligible students in a State to 125 percent in determining the ratio for allotting funds for a fiscal year. This provision would apply to a State that meets the requirements under proposed § 692.113(b) for reduced State matching because the State is applying for an allotment in partnership with degree-granting institutions whose combined full-time enrollment represents a majority of all students attending institutions of higher education in the State.

In some years, sufficient funds may be available to allot to each State that participated in the prior fiscal year a continuation award that is the same amount of Federal GAP funds as were allotted in the prior fiscal year, but are not sufficient both to allot at least the same amount of Federal GAP funds allotted in the prior year to these States and also to allot funds to additional States in accordance with the ratio used to allot the States' Federal LEAP funds under § 692.10(a). For these circumstances we are proposing § 692.110(a)(3)(i) that would provide to each State that participated in the prior fiscal year a continuation award in the amount the State received in the prior fiscal year. From the remaining Federal GAP funds, new applicants would be allotted an amount based on the ratio used to allot the State's Federal LEAP funds under § 692.10(a).

Insufficient funds may be available to allot a continuation award that is at least the amount of Federal GAP funds that were allotted to each State in the prior fiscal year. In this circumstance, proposed § 692.110(a)(3)(ii) would provide that each State would receive an allotment that bears the same ratio to the amount of Federal GAP funds available as the amount of Federal GAP funds allotted to each State in the prior fiscal year bears to the amount of Federal GAP funds allotted to all States in the prior fiscal year.

Proposed § 692.110(b) provides that we would reallot funds available for reallotment in a fiscal year in accordance with the provisions of proposed § 692.110(a) that were used to calculate initial allotments for the fiscal year.

Proposed § 692.110(c) provides that any funds made available for GAP but not expended in a fiscal year may be allotted or reallotted under the LEAP Program.

Proposed § 692.70 would clarify that, for fiscal year 2010 (2010–2011 award year), we would allot funds to States applying under the SLEAP Program in accordance with § 692.10 prior to calculating allotments to States applying for GAP funds under proposed subpart C of part 692.

Reasons: Except to carry out provisions specific to GAP, we are proposing to apply the allotment formulas applicable to the LEAP Program. This proposal is in accordance with section 415E(g) of the HEA, as amended by the HEOA, that provides that the LEAP Program provisions that are not inconsistent with GAP requirements apply to GAP.

Two specific provisions of GAP would modify the allotment formulas used for the LEAP Program. One provision gives priority to States that apply for an allotment in partnerships with degree-granting institutions whose combined full-time enrollment represents a majority of all students attending institutions of higher education in the State. The other provision provides that a State's GAP allotment may not be less than the allotment made to the State in the previous year.

We propose to implement the funding priority in proposed § 692.110(a)(2) by providing that the State's enrollment of eligible students would be 125 percent of its eligible students in applying the allotment formula to all States. We believe that the proposed 125 percent fulfills the statutory provision while providing that all eligible States have an opportunity to qualify for funding under the allotment formula.

For continuing awards, there may be a year in which there are sufficient funds available to allot to each State that participated in the prior fiscal year the same amount of Federal GAP funds that were allotted in the prior fiscal year, but insufficient funds are available both to allot the same amount of Federal GAP funds to these continuing States as in the prior year and to allot additional funds to additional States in accordance with the ratio used to allot the States' Federal LEAP funds. For these circumstances, we believe it is in accordance with the statute to provide continuing States with the same allotment as received in the prior fiscal year as proposed in § 692.110(a)(3)(i). Additional applicants would receive an allotment based on applying to the remaining available funds the allotment formula used to allot the States' Federal LEAP funds.

Another circumstance affecting continuing awards would be a year for which there are insufficient funds available to allot a continuation award that is at least the amount of Federal GAP funds allotted to each State in the prior year. Proposed § 692.110(a)(3)(ii) would provide that we ratably reduce the allotment of each State in proportion to its prior year funding. Under this proposal we would allot to each State an amount that would bear the same ratio to the amount of Federal GAP funds available as the amount of Federal GAP funds allotted to each State in the prior fiscal year bears to the amount of Federal GAP funds allotted to all States in the prior fiscal year. This proposal would ensure that, to the extent practicable, a State with an allotment in the prior fiscal year would receive, at least proportionately, the same allotment as in the prior year.

Proposed § 692.110(b) provides that we would reallot available funds in a fiscal year in accordance with the provisions of proposed § 692.110(a) that were used to calculate initial allotments for the fiscal year, and under proposed § 692.110(c) any funds made available to GAP but not expended would be allotted or reallotted under the LEAP Program. We believe that applying the provisions for realloting funds as authorized under section 415B of the HEA is not inconsistent with the provisions of GAP and, therefore, must be applied to GAP allotments in accordance with section 415E(g) of the HEA. In addition we believe that it would be consistent with the provisions of section 415A(b) of the HEA to allot or reallot funds under the LEAP

Program that were previously made available to GAP but not expended.

We are proposing to amend § 692.70 of the SLEAP Program to implement the provisions of section 415E(j) of the HEA for fiscal year 2010 (2010–2011 award year). As a practical matter, no State was able to participate in the GAP Program in fiscal year 2009 (2009–2010 award year), and these procedures are necessary only for fiscal year 2010.

In proposed appendix A to subpart C of part 692, we are providing a case study that would illustrate the proposed requirements for allotting funds under the GAP Program, including the provisions implementing the funding priority, continuation awards, and SLEAP Program funding during the transition period of fiscal year 2010 (the 2010–2011 award year) when a State may continue to participate in the SLEAP Program in lieu of GAP Program participation. Apart from State enrollments for fiscal year 1979 used in the allotment formula, nothing in the case study should be considered to reflect any State's actual circumstances or the expected results for any State.

Non-Federal Matching Funds (§ 692.113(a)(2))

Statute: Section 415E(b)(2) of the HEA provides that the non-Federal matching funds for a State's GAP Program may be cash or a noncash, in-kind contribution that has monetary value and helps a student meet the cost of attendance at an institution of higher education.

Current Regulations: None.

Proposed Regulations: Under proposed § 692.113(a)(2), a State may include cash or in-kind contributions as non-Federal matching funds of a State partnership under the GAP Program. An in-kind contribution must be fairly evaluated; have monetary value, such as a tuition waiver; and be considered estimated financial assistance under 34 CFR 673.5(c).

Reasons: These proposed regulations would implement the provisions of section 415E(b)(2) of the HEA.

Members of the LEAP/GAP subcommittee noted the need to clarify the qualifying matching funds, including the in-kind contributions that may qualify as matching funds to make LEAP Grants under GAP to eligible students.

Cash that qualifies as matching funds may include, but is not limited to, State-appropriated funds or other State funds such as funds from a State lottery or tuition revenue at public institutions of higher education. Matching cash may also be grants to students provided by private institutions or philanthropic organizations or private corporations.

An in-kind contribution is a noncash contribution that has monetary value, such as a tuition waiver, the provision of room and board, transportation passes, or other provisions that help a student meet the cost of attending an institution of higher education. The proposed regulations would further clarify that an in-kind contribution must be considered to be estimated financial assistance under 34 CFR 673.5(c). As in the case of matching cash, matching in-kind contributions may be provided by the State, institutions of higher education, or philanthropic organizations or private corporations.

Regardless of whether the funds are cash or are an in-kind contribution, funds would qualify as matching funds only if awarded in accordance with the GAP Program requirements, and the matching funds would be considered title IV, HEA program assistance. For example, if a student receiving a tuition waiver did not graduate from secondary school, as required under § 692.120(a)(2) to qualify as an eligible student for a LEAP Grant under GAP, the amount of the tuition waiver could not qualify as matching funds for the non-Federal share of a State's GAP Program nor would it qualify as title IV, HEA program assistance. If another student receiving a tuition waiver graduated from secondary school and was otherwise eligible for a LEAP Grant under GAP, the amount of this other student's tuition waiver would qualify as matching funds for the non-Federal share of a State's GAP Program and as title IV, HEA program assistance.

Nothing in these proposed regulations would require a State to provide LEAP Grants under GAP to meet all costs of attendance. As with LEAP Grants under subpart A of this part, a State may, for example, restrict a LEAP Grant under GAP to meeting a student's tuition and fees. The restriction could apply to funds from both the Federal allotment and both cash and in-kind contributions toward the non-Federal share.

In accordance with 34 CFR 80.24 of EDGAR, generally other Federal funds may not be used to meet a State's non-Federal share nor may a State use the same non-Federal funds to meet the non-Federal share of more than one Federal program. For instance, non-Federal funds used to match the Gaining Early Awareness and Readiness for Undergraduate (GEAR UP) Program may not be used as matching funds for the GAP Program because those non-Federal funds were already used to match another Federal program. However, those non-Federal funds would be included in the State's base-year and maintenance of effort requirements under proposed § 692.100(f) and (g).

Enrollment and the Amount of State Match (§ 692.113(b))

Statute: Section 415E(b)(2) of the HEA provides that the amount of the non-Federal matching funds for a State's GAP Program is based on the full-time equivalent enrollment of the institutions of higher education participating in the State's partnership.

Current Regulations: None.

Proposed Regulations: Under proposed § 692.113(b), the non-Federal match of the Federal allotment must be forty-three percent of the expenditures under this subpart if a State applies for a GAP allotment in partnership with degree-granting institutions of higher education in the State whose combined full-time enrollment represents less than a majority of all students attending institutions of higher education in the State, or thirty-three and thirty-four one-hundredths percent of the expenditures under this subpart if a State applies for a GAP allotment in partnership with degree-granting institutions of higher education in the State whose combined full-time enrollment represents a majority of all students attending institutions of higher education in the State.

Reasons: These proposed regulations would implement the provisions of section 415E(b)(2) of the HEA. Members of the LEAP/GAP subcommittee believed that the number of students used in determining these percentages should include both in-State and out-of-State students. We agree.

Base-year Requirement (§ 692.100(f))

Statute: Section 415E(i) of the HEA provides that in determining a State's share of the costs of the State's GAP Program, the State may consider only those expenditures from non-Federal sources that exceed the State's total expenditures for need-based grants, scholarships, and work-study assistance for fiscal year 1999.

Current Regulations: None.

Proposed Regulations: Under proposed § 692.100(f), the State must provide an assurance that the non-Federal funds used as matching dollars under the State's GAP Program is in excess of what the State spent in fiscal year 1999 on need-based grants, scholarships, and work-study assistance.

Reasons: Section 415E(i) of the HEA and proposed § 692.100(f) are identical to the base-year provisions for the previously authorized SLEAP Program. Proposed § 692.100(f) would consider the same fiscal year 1999 expenditures

from the same need-based grant, scholarship, and work-study programs a State operated in fiscal year 1999. Thus, the amount of a State's expenditures in fiscal year 1999 as determined for the SLEAP Program would be the same amount applicable for the State under these proposed regulations for the GAP Program.

Maintenance-of-Effort Requirement (§ 692.100(g))

Statute: Section 415E(h) of the HEA provides that the aggregate amount expended by a State per student, or the aggregate expenditures by the State, for funds derived from non-Federal sources, for the authorized activities under section 415E(d) of the HEA for the preceding fiscal year were not less than the amount expended per student or the aggregate expenditure by the State for these authorized activities for the second preceding fiscal year. The authorized activities under section 415E(d) of the HEA include making LEAP Grants under GAP and certain administrative expenses.

Current Regulations: None.

Proposed Regulations: Under proposed § 692.100(g), the State must provide an assurance that it meets the GAP maintenance-of-effort (MOE) requirement. Under the GAP MOE requirement, for the fiscal year prior to the fiscal year for which the State is requesting Federal funds, the amount the State expended from non-Federal sources per student, or the aggregate amount the State expended, for all the authorized activities in § 692.111, i.e., making LEAP Grants under GAP and certain administrative expenses for the GAP Program, will be no less than the amount the State expended from non-Federal sources per student, or in the aggregate, for those activities for the second fiscal year prior to the fiscal year for which the State is requesting Federal funds.

Reasons: Section 415E(h) of the HEA and proposed § 692.100(g) are essentially the same as the MOE provisions for the previously authorized SLEAP Program except that the GAP MOE provision is concerned only with expenditures for GAP program activities. Because States can only participate in the GAP Program starting in the 2010–2011 award year, the total State expenditures for authorized GAP activities for the 2008–2009 and 2009–2010 award years would be zero. A State's MOE would not be relevant to qualifying for a GAP allotment until fiscal year 2012 (the 2012–2013 award year).

Note that although the statute and regulations refer to funding in terms of a fiscal year, States receive LEAP, SLEAP, and GAP funds operationally on an award year (July 1 through June 30) basis. Therefore, a State's MOE and matching requirements are also measured on an award year basis.

Student Eligibility—Secondary School Graduate (§ 692.120(a)(2))

Statute: Section 415E(d)(2)(B)(i)(V)(bb) of the HEA provides that a student must graduate from secondary school to be eligible for a LEAP Grant under GAP.

Current Regulations: None.

Proposed Regulations: Under proposed § 692.120(a)(2), to be eligible for a LEAP Grant under GAP, a student must graduate from secondary school or, for a home-schooled student, must complete a secondary education.

Reasons: Proposed § 692.120(a)(2) is necessary to implement section 415E(d)(2)(B)(i)(V)(bb) of the HEA. We believe that a home-schooled student who completes a secondary education would satisfy the statutory requirement that a student graduate from secondary school. However, a student who passed an approved ability-to-benefit test or obtained a General Educational Development (GED) certificate would not satisfy the statutory provision and would not qualify as an eligible student for a LEAP Grant under GAP.

Student Eligibility—State's Maximum LEAP Program Award (§ 692.120(a)(3)(ii)(B))

Statute: Section 415E(d)(3)(A)(ii) of the HEA provides that a student is eligible for a LEAP Grant under GAP if the student qualifies for the State's maximum undergraduate LEAP Grant under the LEAP Program as authorized under section 415(C)(b) of the HEA.

Current Regulations: None.

Proposed Regulations: Proposed § 692.120(a)(3)(ii)(B) would provide that, in an award year in which a student is receiving an additional LEAP Grant under GAP, a student's eligibility may be based, in part, on qualifying for a State's maximum undergraduate award for LEAP Grants under the LEAP Program in accordance with subpart A of part 692.

Reasons: Proposed § 692.120(a)(3)(ii)(B) is necessary to implement section 415E(d)(3)(A)(ii) of the HEA. Members of the LEAP/GAP subcommittee were concerned that a State's LEAP Program may not have a single maximum award amount. They were also concerned that a student may qualify for a maximum award but not receive the maximum amount. We agree that a student may qualify for the State's maximum LEAP Grant under the LEAP Program in a State that may have more than one maximum award amount without qualifying for the highest of the maximum awards, *e.g.*, a State may have different maximum awards for attendance at public and private institutions. In these cases, a student's maximum award is based on the maximum award amount established for the applicable category or program under which the student qualifies. We agree that a student would meet this requirement if the student qualifies for the State's maximum undergraduate award but does not actually receive the full amount of the maximum award.

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, it has been determined this proposed regulatory action will have an annual effect on the economy of more than $100 million. Therefore, this action is ''economically significant'' and subject to OMB review under section 3(f)(1) of Executive Order 12866. Virtually all of the economic impact associated with these proposed regulations flows from proposed § 690.67 (implementing the statutory provision in section 401(a)of the HEOA) allowing the award of two Pell Grants in one year for students who wish to accelerate their program of study. Outside of this provision, the cost of which is driven almost entirely by explicit statutory requirements, these proposed regulations would not be considered ''economically significant.''

The Secretary has assessed the potential costs and benefits of this regulatory action and has determined that the benefits justify the costs.

Need for Federal Regulatory Action

These proposed regulations are needed to implement provisions of the HEA, as amended by the HEOA, related to changes to the Federal grant and work-study programs, campus safety, educational programs for students with intellectual disabilities, copyright infringement, teach-outs, readmission of servicemembers, and non-Title IV revenue.

In general, these regulations simply restate specific HEOA requirements, in many cases using language drawn directly from the statute, or make technical changes to conform with statutory requirements or other regulations. In the following areas, the Secretary has exercised limited discretion in implementing the HEOA provisions in these proposed regulations:

Definition of baccalaureate liberal arts programs offered by proprietary institutions: The Secretary determined that, to meet the statutory requirement that an institution offer a program, a liberal arts program must be an organized program of study that is essentially the same for all students, except that it could include some elective courses.

Readmission requirements for servicemembers: The Secretary determined that the statute applies both to a student who began attendance at an institution and left because of service in the uniformed services and to a student admitted to an institution who did not begin attendance because of service in the uniformed services. The Secretary defined ''promptly readmit'' as readmitting a student into the next class or classes in the student's program unless the student requests a later date of admission, or unusual circumstances require the institution to admit the student at a later date.

Non-title IV revenue requirement (90/10)—institutional eligibility and sanctions: The Secretary determined that an institution has 45 days after the end of its fiscal year to notify the Department if it failed the 90/10 requirement.

Non-title IV revenue requirement (90/10)—calculating revenue percentage: The Secretary identified types of non-title IV eligible programs from which an institution could count, as revenue, funds paid for students taking those programs; identified elements to distinguish an institutional loan from other student account receivables; and set criteria to allocate excess loan funds treated as non-Federal revenue to each payment period.

Net present value: As discussed more fully in the net present value discussion in this preamble, the Secretary established a formula for institutions to use in calculating the net present value of institutional loans made during a fiscal year for the purpose of counting those loans as non-Federal revenue. As an alternative, the proposed regulations would also allow an institution to use 50 percent of the total amount of loans it made during the fiscal year as the NPV, provided that none of these loans are sold until they have been in repayment for at least two years.

Institutional plans for improving the academic program: While requiring institutions to provide prospective and enrolled students information about plans for improving the institution's academic program, the Secretary determined that institutions themselves are in the best position to determine what defines a plan, including when a plan becomes a plan subject to dissemination under this provision.

Peer-to-peer file sharing/copyrighted material: The Secretary determined that in implementing statutory requirements intended to reduce the unauthorized distribution of copyrighted material, institutions must incorporate at least one technological deterrent; must inform users that the unauthorized distribution of copyrighted material is illegal, what actions constitute illegal distribution of copyrighted material, and the potential penalties for doing so; and must use relevant assessment criteria to evaluate how effective its plans are in combating the unauthorized distribution of copyrighted materials by users of the institution's networks.

Consumer Information: The Secretary determined that institutions must identify the source of the information disclosed, as well as the time frames and methodology associated with that information; that institutions must disclose the retention rate as reported to the Integrated Postsecondary Education Data System (IPEDS); that, with limited exceptions, institutions must disaggregate completion and graduation rate data by gender, by major racial and ethnic subgroup, and by whether or not the institution's students received certain types of Federal student aid; and that, in cases where 20 percent or more of the certificate- or degree-seeking, full-time, undergraduate students at an institution left school to serve in the Armed Forces, to serve on official church missions, or to serve with a foreign aid service of the Federal Government (such as the Peace Corps), the institution may recalculate the completion or graduation rate of those students by adding the time period of service to the 150 percent time frame they normally have to complete or graduate.

Campus Safety Provisions—Hate Crime Reporting: The Secretary determined that the current FBI's Hate Crime Data Collection Guidelines in the Uniform Crime Reporting Handbook should be used to define the hate crimes to be reported.

Campus Safety Provisions—Definition of Test: The Secretary defines *test* for purposes of emergency response and evacuation procedures as regularly scheduled drills, exercises, and appropriate follow-through activities, designed for assessment and evaluation of emergency plans and capabilities.

Campus Safety Provisions—Annual Security Report/Emergency Response and Evacuation Procedures: The Secretary determined that institutions must include a statement of policy regarding their emergency response and evacuation procedures in the annual security report beginning with the annual security report distributed by October 1, 2010. The Secretary established these emergency response procedures to ensure institutions are prepared for an emergency situation on campus. These procedures include testing procedures to identify and improve weaknesses and procedures to providing emergency information to the campus and larger community, such as parents.

Campus Safety Provisions—Timely Warning and Emergency Notification: The Secretary determined that a timely warning must be issued in response to crimes specified in the regulations and that an emergency notification is required in the case of an immediate threat to the health or safety of students or employees occurring on campus, covering a broader scope of situations than those covered by the timely warning requirement.

Campus Safety Provisions—Annual Security Report/Emergency Response and Evacuation Procedures/Definition of On-Campus Student Housing Facility: The Secretary defines the term *on-campus student housing facility* to mean a dormitory or other residential facility for students that is located on an institution's campus, as defined in § 668.46(a).

Campus Safety Provisions—Annual Security Report/Missing Student Notification Policy: The Secretary determined that the annual security report must include information about missing student policies and procedures.

Campus Safety Provisions—Missing Student Notification Policy: The Secretary determined that institutional missing student notification policies must include a list of the titles of the persons or organizations to which a student should be reported missing, must allow students to register in a confidential manner a contact person to be notified within 24 hours if they are reported missing, must inform students that their parent or guardian will be notified if they are under eighteen and not an emancipated minor, and must inform students that law enforcement will be notified within 24 hours if the student has been determined to be missing for 24 hours.

Campus Safety Provisions—Annual Fire Safety Report: The Secretary included definitions for *cause of fire, fire, fire drill, fire-related injury, fire-related death, fire-safety* system, and *value of property damage* to enable comparability across institutions of the statistics that institutions are required to report. Additionally, institutions must submit statistics to the Department in their annual fire safety report and must provide data for the three most recent calendar years for which data are available, with reporting requirements phased in beginning with the collection of calendar year 2009 statistics for inclusion in the October 1, 2010 Annual Fire Safety Report.

Financial Assistance for Students with Intellectual Disabilities: The Secretary determined that a comprehensive transition and postsecondary program for students with intellectual disabilities must be delivered to students who physically attend the institution and that such a program must provide opportunities for students with intellectual disabilities to participate in coursework and other activities with students without disabilities.

Work-Study: The Secretary determined that written authorizations from students will no longer be required before an institution can credit a student's account or hold a credit balance for the student.

TEACH Grant Program Periods of Suspension and Discharge of Agreement to Serve: The Secretary determined that a TEACH Grant recipient's teaching service obligation should be discharged in cases when the recipient cannot comply with his or her agreement to teach because of a call or order to active military duty for an extended period of time.

Two Federal Pell Grants in an Award Year: The Secretary determined that a student would be eligible for a second Scheduled Award if the student has earned in an award year at least the credit or clock hours of the first academic year of the student's eligible program, and is enrolled as at least a half-time student in a program leading to a bachelor's or associate degree or other recognized educational credential, except as provided for students with intellectual disabilities. The Secretary determined that a financial aid administrator may, on an individual basis, waive the requirement that a student complete the credit or clock hours in the student's first academic year in the award year due to special circumstances beyond the student's control. The Secretary determined that in calculating a transfer student's eligibility to receive a second Scheduled Award, an institution determines the credit or clock hours the student has earned at a prior institution during the award year based on the Federal Pell Grant disbursements that the student received at the prior institution during the award year in relation to the student's Scheduled Award at that prior institution.

The Secretary determined that if a student is enrolled as a three-quarter-time or full-time student, an institution must consider a crossover payment period, i.e., a payment period that occurs in two award years, to be in the award year in which the student would receive the greater payment for the payment period based on the information available at the time that the student's Federal Pell Grant is initially calculated. If the institution subsequently receives information that the student would receive a greater payment for the payment period by reassigning the payment to the other award year, the institution would be required to reassign the crossover payment to the award year providing the greater payment.

A student may request that the institution place the payment period in the award year that can be expected to result in the student receiving a greater amount of Federal Pell Grants over the two award years in which the payment period is scheduled to occur. If the student makes that request, the institution must assign the payment period to that award year.

Maximum Federal Pell Grant for Children of Soldiers: The Secretary determined that a student whose parent or guardian died as a result of performing military service in Iraq or Afghanistan after September 11, 2001 is deemed to have a zero expected family contribution (EFC) for the Federal Pell Grant Program.

Regulatory Alternatives Considered

This section addresses the alternatives that the Secretary considered in implementing the discretionary portions of the HEOA provisions. Except where noted, alternatives considered did not have a measurable effect on Federal costs. These alternatives are discussed in more detail in the *Reasons* sections of this preamble related to the specific regulatory provisions.

Campus-Safety Provisions: In general, the Secretary adopted alternatives that maximized the availability of information provided to students and parents while avoiding unnecessary burden on institutions. Specific examples of this process are discussed in the *Reasons* sections accompanying individual regulatory provisions.

Two Federal Pell Grants in an Award Year: The Department proposed that a student would be eligible to receive payment from a second Scheduled Award if the student was also completing the hours of the first academic year in that payment period. In conjunction with this provision, the Department proposed to require recalculation of a student's payment for any payment period in which the student is receiving a second Scheduled Award if the projected enrollment status of a student enrolled in a term-based program changed. This recalculation requirement would ensure that a student who is not accelerating does not receive the benefit of a payment from a second Scheduled Award. Non-Federal negotiators objected to the recalculation requirements, citing concern that they would be administratively burdensome and create a different treatment compared to recalculations for first Scheduled Awards. As discussed extensively above in the *Reasons* section related to this provision, the Department rejected a number of alternatives proposed by non-Federal negotiators, because they failed to encourage a student to accelerate the completion of his or her program of study within a shorter time period than the regularly scheduled completion time, i.e., the published length of the program. Consensus was not reached on this issue.

Maximum Federal Pell Grant for Children of Soldiers: During the negotiation of these proposed regulations, the Department proposed that a student must have an EFC in the numerical range that would make a student eligible for a Federal Pell Grant to qualify for a zero EFC under this provision. Non-Federal negotiators objected that this added an additional student eligibility requirement not

provided for in the statute. Based on this objection and the Department's belief that any student with a parent or guardian who died in Iraq or Afghanistan after September 11, 2001 should receive a zero EFC, the Department agreed with the non-Federal negotiators' proposed language although the Department's alternative would have cost approximately $450,000 less over five years than the proposed regulations that drew consensus.

Non-Federal negotiators also suggested that recipients should receive a Maximum Pell Award instead of a zero EFC. The Department declined on the basis that it conflicted with the explicit language of the statute.

TEACH Grant Program Periods of Suspension and Discharge of Agreement to Serve: Several non-Federal negotiators suggested that the Department should expand the categories of extenuating circumstances under which a TEACH Grant recipient who is unable to fulfill all or a portion of his or her teaching service obligation may be excused from fulfilling that portion of the teaching service obligation to include economic hardship, noting that teachers were being laid off in a number of areas and TEACH Grant recipients might not be able to find full-time employment in their high-need fields due to the current economic conditions. The Department rejected this alternative, believing that the eight-year timeframe to complete the four-year service requirement is sufficient to overcome temporary hardship in locating a suitable position.

Benefits

Benefits provided in these proposed regulations include greater transparency for prospective and enrolled students at institutions participating in the Federal Student Financial Assistance programs; increased eligibility for certain recipients of Federal Student Financial Assistance program funds; established requirements under which servicemembers are readmitted to participating institutions; established extenuating circumstances under which a TEACH Grant recipient may be excused from fulfilling all or part of his or her service obligation; expanded use of FWS funds to permit institutions to compensate students employed in projects that teach civics in school, raise awareness of government functions or resources, or increase civic participation; allowing institutions located in major disaster areas to make FWS payments to disaster-affected students; new requirements for determining how proprietary institutions calculate the amount and percent of revenue derived from sources other than title IV, HEA program funds; providing that an institution that conducts a teach-out at a site of a closed institution may, under certain conditions, establish that site as an additional location; amending the definition of ''proprietary institution of higher education'' to include institutions that provide a program leading to a baccalaureate degree in liberal arts, if the institution provided that program since January 1, 2009, and has been accredited by a regional accrediting agency since October 1, 2007, or earlier; providing that the non-Federal share of LEAP Grants no longer has to come from a direct appropriation of State funds; increased information to LEAP Grant recipients and recipients of the new GAP program; and the establishment of the activities, awards, allotments to States, matching funds requirements, consumer information requirements, application requirements, and other requirements needed to begin and continue participating in the GAP Program. In most cases, the Department lacks data to accurately assess the impact of these benefits. The Department is interested in receiving comments or data that would support a more rigorous analysis of the impact of these provisions.

These benefits all flow directly from statutory changes included in the HEOA; they are not materially affected by discretionary choices exercised by the Department in developing these regulations. As discussed in greater detail under *Net Budget Impacts*, these proposed provisions result in net costs to the government of $1,644 million over 2010–2014.

Costs

Many of the statutory provisions implemented though this NPRM will require regulated entities to develop new disclosures and other materials, as well as accompanying dissemination processes. Other proposed regulations generally would require discrete changes in specific parameters associated with existing guidance—such as changes to FWS cash management practices and TEACH Grant service suspension and discharge benefits.

Entities wishing to continue to participate in the student aid programs have already absorbed most of the administrative costs related to implementing these proposed regulations. Marginal costs over this baseline are primarily related to one-time system changes that, while possibly significant in some cases, are an unavoidable cost of continued program participation. In assessing the potential impact of these proposed regulations, the Department recognizes that certain provisions—such as the requirement for additional disclosures—are likely to increase workload for some program participants. This additional workload is discussed in more detail under the *Paperwork Reduction Act of 1995* section of this preamble. Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. Given the limited data available, the Department is particularly interested in comments and supporting information related to possible burden stemming from the proposed regulations. Estimates included in this notice will be reevaluated based on any information received during the public comment period.

Federal Pell Grant Program:

Statutory changes implemented by these proposed regulations are estimated to increase grant awards under the Federal Pell Grant Program by $297 million over award year 2009–2010 and a total of $1,643 million over five years. This will increase Federal costs by the same amount.

Statutory changes implemented by these proposed regulations to grant children of deceased soldiers a zero EFC are estimated to increase grant awards under the Federal Pell Grant Program by approximately $280,000 over award year 2009–2010 and a total of $500,000 over five years. This will increase Federal costs by the same amount.

Because institutions of higher education affected by these regulations already participate in the Federal Pell Grant Program, these schools have already established systems and procedures to meet program eligibility requirements. Accordingly, entities wishing to continue to participate in the program have already absorbed most of the administrative costs related to implementing these regulations. Marginal costs over this baseline are primarily related to one-time system changes that, while possibly significant in some cases, are an unavoidable cost of continued program participation.

Net Budget Impacts

HEOA provisions implemented by these proposed regulations are estimated to have a net budget impact of $297.4 million in 2010 and $1.6 billion over FY 2011–2013. Absent evidence on the impact of these regulations on student behavior, budget cost estimates were based on behavior as reflected in various Department data

sets and longitudinal surveys listed under *Assumptions, Limitations, and Data Sources* in this preamble. The budgetary impact of the proposed regulations is almost entirely driven by statutory changes involving the provision of two Pell Grants in one year.

Assumptions, Limitations, and Data Sources

Because these proposed regulations would largely restate statutory requirements that would be self-implementing in the absence of regulatory action, impact estimates provided in the preceding section reflect a pre-statutory baseline in which the HEOA changes implemented in these proposed regulations do not exist. Costs have been quantified for five years. In general, these estimates should be considered preliminary; they will be reevaluated in light of any comments or information received by the Department prior to the publication of the final regulations. The final regulations will incorporate this information in a revised analysis.

In developing these estimates, a wide range of data sources were used, including data from the National Student Loan Data System; operational and financial data from Department of Education systems; and data from a range of surveys conducted by the National Center for Education Statistics such as the 2004 National Postsecondary Student Aid Survey, the 1994 National Education Longitudinal Study, and the 1996 Beginning Postsecondary Student Survey. For the regulations related to the Federal Pell Grant Program, the sample file used for the Pell Grant estimation model is created from a representative portion of FAFSA applicants merged to Pell recipient data from the most current completed academic year (currently AY 2007–08). The sample data is ''aged'' using OMB economic assumptions and applicant growth assumptions to project future awards. Data from other sources, such as the Census Bureau, were also used. Data on administrative burden at participating schools and third-party servicers are extremely limited; accordingly, as noted above, the Department is particularly interested in comments in this area.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading *Paperwork Reduction Act of 1995.*

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in Table 1, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these proposed regulations. Expenditures are classified as transfers from the Federal government to student loan borrowers (for expanded loan discharges, teacher loan forgiveness payments).

TABLE 1—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES (IN MILLIONS)

Category	Transfers
Annualized Monetized Transfers.	$297.4 million in 2010.
From Whom To Whom?	Federal Government To Student Loan Borrowers.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 682.209 Repayment of a loan.)
- Could the description of the proposed regulations in the ''Supplementary Information'' section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section of this preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect institutions of higher education that participate in Title IV, HEA programs and individual students and parents. The U.S. Small Business Administration Size Standards define institutions and lenders as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. A significant percentage of the institutions participating in the Federal student loan programs meet the definition of ''small entities.'' For these institutions, the new requirements imposed under the proposed regulations are not expected to impose significant new costs. The impact of the proposed regulations on individuals is not subject to the Regulatory Flexibility Act.

The Secretary invites comments from small institutions and lenders as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

Paperwork Reduction Act of 1995

Proposed §§ 668.14, 668.18, 668.23, 668.28, 668.41, 668.43, 668.45, 668.46, 668.49, 668.232, 668.233, 686.41, 686.42, 690.63, 690.64, 690.67, 690.75, 692.21, and 692.100, 692.101, 692.111 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Section 600.5(a)(5)—Definition of Baccalaureate Liberal Arts Programs Offered by Proprietary Institutions

The proposed change to § 600.5(a)(5) would add to the definition of *proprietary institution of higher education,* an institution that provides a program leading to a baccalaureate degree in liberal arts that the institution has provided since January 1, 2009, so long as the institution has been accredited by a recognized regional accreditation agency or organization since October 1, 2007, or earlier. This proposed change in the definition of a proprietary institution does not impact burden.

While the current regulations point to OMB 1840–0098, we estimate that there is no change in burden associated with this section of the regulations as

reported under the redesignated OMB Control Number 1845–0012.

Section 668.14(b)(31)—Institutional Requirements for Teach-Outs/Eligibility and Certification Procedures

The proposed regulations in § 668.14(b)(31) are amended to require an institution to submit a teach-out plan to its accrediting agency whenever (1) the Department or their accrediting agency initiates an LS&T, or an emergency action against the institution, as required by statute; (2) the institution's State licensing or authorizing agency revokes the institution's license or legal authorization to provide an educational program; (3) the institution intends to close a location that provides 100 percent of at least one program; or (4) the institution otherwise intends to cease operations.

While the current regulations in § 668.14 point to OMB 1840–0537, we estimate that the proposed changes in § 668.14 will increase burden by 160 hours for institutions under the redesignated OMB Control Number 1845–0022.

Section 668.18—Readmission Requirements for Servicemembers

The proposed § 668.18 of the regulations include the general requirements that an institution may not deny readmission to a servicemember, but must readmit the servicemember with the same academic status as when the student was last admitted to the institution. The proposed regulations clarify that the requirements also apply to a student who was admitted to an institution, but did not begin attendance because of service in the uniformed services. The proposed regulations specify that the institution must promptly readmit a student, and would define ''promptly readmit'' as readmitting a student into the next class or classes in the student's program unless the student requests a later date of admission, or unusual circumstances require the institution to admit the student at a later date. The proposed regulations require the institution to make reasonable efforts to help the student become prepared or to enable the student to complete the program including, but not limited to, providing refresher courses at no extra cost and allowing the student to retake a pretest at no extra cost. The institution would not be required to readmit the student if, after reasonable efforts by the institution, the student is still not prepared to resume the program at the point where he or she left off, or is still unable to complete the program.

The proposed regulation requires an institution to designate one or more offices for the purpose of receiving advance notice from students of their absence from the institution necessitated by service in the uniformed services, and notice from students of intent to return to the institution. However, such notice would not need to follow any particular format, nor would a student have to indicate if the student intends to return to the institution. Also, any such notice may be provided by an appropriate officer of the Armed Forces. The notice of intent to return may be provided orally or in writing and would not need to follow any particular format. A period of absence from the institution before or after performing service in the uniformed services would not count against the period of uniformed service which is limited to the five years.

The proposed regulations list the documentation that support the institution's determination for readmission that a student must submit with an application for readmission. The proposed regulations make clear that the types of documentation available or necessary will vary from case to case.

The proposed regulations list the circumstances that a student's eligibility for readmission to an institution would be terminated.

We estimate that the proposed changes will increase burden for students by 384 hours and for institutions by 1,129 hours for a total increase in burden of 1,513 hours in OMB Control Number 1845–NEW1.

Non-Title IV Revenue Requirement (90/10)

Section 668.28(a)—Calculating the Revenue Percentage

The proposed regulations in § 668.28(a) implement the statutory provisions relating to counting revenue from non-title IV eligible programs.

Regarding institutional loans for which a net present value (NPV) would be calculated, the proposed regulations establish that institutional loans would have to be credited in-full to the students' accounts, be evidenced by standalone repayment agreements between students and the institution, and be separate from enrollment contracts signed by students.

To count revenue from loan funds in excess of the loan limits in effect prior to ECASLA in the allowable revenue category, the proposed regulations allow institutions to count the excess amount on a payment-period basis.

We estimate that the proposed regulations will increase burden for institutions; however, these proposed regulations only define non-title IV revenue. The burden increase is found in § 668.28(b) and (c) under OMB 1845–NEW2.

Section 668.28(b)—Net Present Value

The proposed regulation 668.28(b) defines the NPV as the sum of the discounted cash flows. Proposed Appendix C illustrates how an institution calculates its 90/10 revenue percentage.

The proposed regulations allow a simpler alternative to performing the NPV calculation, by allowing an institution to use 50 percent of the total amount of loans it made during the fiscal year as the NPV. However, as a condition of using the 50 percent alternative calculation, if the institution chooses to use this alternative, it may not sell any of the associated loans until they have been in repayment for at least two years.

We estimate that the proposed regulations will increase burden for institutions by 3,087 hours in the new OMB Control Number 1845–NEW2.

Section 668.28(c)—Non-title IV Revenue (90/10)

The proposed regulations in § 668.28(c) would remove all of the 90/10 provisions from 34 CFR 600.5 and relocate the amended provisions to subpart B of part 668. The proposed regulations amend the program participation agreement to specify that a proprietary institution must derive at least 10 percent of its revenue from sources other than title IV, HEA program funds. If an institution does not satisfy the 90/10 requirement, the proposed regulations require the institution to notify the Department no later than 45 days after the end of its fiscal year that it failed the 90/10 requirement. In keeping with provisional certification requirements the current regulations are amended by adding proposed language to provide that a proprietary institution's certification automatically becomes provisional if it fails the 90/10 requirement for any fiscal year.

We estimate that the proposed regulations in § 668.28(c) will increase burden for institutions by 1 hour in the new OMB Control Number 1845–NEW2.

Section 668.23(d)(4)—Audited Financial Statements

The proposed regulations in § 668.23(d)(4) require that a proprietary institution must disclose in a footnote to its financial statement audit the percentage of its revenues derived from the title IV, HEA program funds that the

institution received during the fiscal year covered by that audit. The institution must also report in the footnote the non-Federal and Federal revenue by source that was included in the 90/10 calculation.

While the current regulations point to OMB Control Number 1840–0697, we estimate that the proposed regulations in § 668.23(d)(4) will increase burden for institutions by 165 hours for the redesignated OMB Control Number 1845–0038.

Section 668.43(a)(5)(iv)—Institutional Plans for Improving the Academic Program

The proposed regulation in § 668.43(a) amends the information about the academic program that the institution must make readily available to enrolled and prospective students about any plans by the institution for improving any academic program at the institution. An institution would be allowed to determine what a ''plan'' is, including when a plan becomes a plan.

We estimate that the proposed regulations will increase burden for institutions by 968 hours in OMB Control Number 1845–0022.

Sections 668.14(b) and 668.43(a)—Peer-to-Peer File Sharing/Copyrighted Material

Section 668.14(b)(30)—Program Participation Agreement (PPA)

The proposed regulations require an institution, as a condition of participation in a title IV, HEA program, to agree that it has developed and implemented plans to effectively combat the unauthorized distribution of copyrighted material by users of the institution's network without unduly interfering with the educational and research use of the network.

An institution's plan must include:

The use of one or more technology-based deterrents;

Mechanisms for educating and informing its community about appropriate versus inappropriate use of copyrighted material;

Procedures for handling unauthorized distribution of copyrighted material, including disciplinary procedures; and

Procedures for periodically reviewing the effectiveness of the plans.

The proposed regulations make clear that no particular technology measures are favored or required for inclusion in an institution's plans, and each institution retains the authority to determine what its particular plans for compliance will be, including those that prohibit content monitoring.

The proposed regulation requires an institution, in consultation with the chief technology officer or other designated officer of the institution, to the extent practicable, offer legal alternatives to illegal downloading or otherwise acquiring copyrighted material, as determined by the institution. The proposed regulations would also require that institutions (1) periodically review the legal alternatives for downloading or otherwise acquiring copyrighted material and (2) make the results of the review available to their students through a Web site and/or other means.

While the current regulations in § 668.14 point to OMB 1840–0537, we estimate that the proposed changes in § 668.14(b)(30) will increase burden by 91,120 hours for institutions under the redesignated OMB Control Number 1845–0022.

Section 668.43(a)(10)—Consumer Information

The proposed regulations requires information regarding institutional policies and sanctions related to the unauthorized distribution of copyrighted material be included in the list of institutional information provided upon request to prospective and enrolled students. This information must (1) explicitly inform enrolled and prospective students that unauthorized distribution of copyrighted material, including peer-to-peer file sharing, may subject a student to civil and criminal liabilities; (2) include a summary of the penalties for violation of Federal copyright laws; and (3) delineate the institution's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in illegal downloading or unauthorized distribution of copyrighted materials using the institution's information technology system.

We estimate that the proposed regulations in § 668.43(a)(10) will increase burden for institutions by 1,424 hours in OMB Control Number 1845–0022.

Section 668.41—Reporting and Disclosure of Information

The proposed regulations in § 668.41 add retention rate information, placement rate information, and information on the types of graduate and professional education in which graduates of the institution's four-year degree programs enroll, to the types of information that an institution must provide to its enrolled and prospective students. When reporting its retention rate, an institution must disclose the institution's retention rate as defined by and reported to the Integrated Postsecondary Education Data System (IPEDS). The institution may use various sources of retention rate information and information on types of graduate and professional education in which graduates of the institution's four-year degree programs enroll (such as State data systems, surveys, or other relevant sources). If an actual placement rate is calculated by the institution, it must be disclosed. The institution would have to identify the source of the information it discloses, as well as the time frames and methodology associated with that information.

While the current regulations point to both OMB 1845–0004 and OMB 1845–0010, OMB 1845–0010 has been recently discontinued, therefore, we estimate that the proposed regulations will increase burden for institutions 8,541 hours in OMB Control Number 1845–0004.

Section 668.45—Information on Completion or Graduation Rates

Under the proposed regulations in § 668.45, an institution's completion and graduation rate information must be disaggregated by gender, by each major racial and ethnic subgroup, and by whether or not the institution's students received certain types of Federal student aid. The disaggregation by receipt of aid is categorized by:

Recipients of a Federal Pell Grant;

Recipients of a Federal Family Education Loan or a Federal Direct Loan (other than an Unsubsidized Stafford Loan); and

Recipients of neither a Federal Pell Grant nor a Federal Family Education Loan or a Federal Direct Loan (other than an Unsubsidized Stafford loan).

The institution would report its completion and graduation rate information in a disaggregated fashion only if the number of students in each category is sufficient to yield statistically reliable information, and doing so would not reveal personally identifiable information about an individual student.

We estimate that the proposed regulations will increase burden for institutions 7,488 hours in OMB Control Number 1845–0004.

Campus Safety Provisions

Section 668.46(c)(3)—Hate Crime Reporting

The proposed regulations add the crimes of ''larceny-theft,'' ''simple assault,'' ''intimidation,'' and ''destruction/damage/vandalism of property'' to the crimes that must be reported in hate crime statistics. Additionally, the proposed regulations

update the definitions of the terms ''Weapons: carrying, possessing, etc.,'' ''Drug abuse violations,'' and ''Liquor law violations'' which are excerpted from the Federal Bureau of Investigation's Uniform Crime Reporting Program, to reflect changes made by the FBI to these definitions in 2004.

We estimate that the proposed regulations will increase burden for institutions by 5,695 hours in OMB Control Number 1845–0022.

Reporting Emergency Response and Evacuation Procedures

Section 668.46(e)—Timely Warning and Emergency Notification

The proposed regulations clarify the difference between the existing timely warning requirement and the new requirement for an emergency notification policy. While a timely warning must be issued in response to specific crimes, an emergency notification is required in the case of an immediate threat to the health or safety of students or employees occurring on campus. The proposed language would clarify that an institution that follows its emergency notification procedures is not required to issue a timely warning based on the same circumstances; however, the institution must provide adequate follow-up information to the community as needed.

We estimate that the proposed regulations will increase burden for institutions by 1,424 hours in OMB Control Number 1845–0022.

Section 668.46(g)—Emergency Response and Evacuation Procedures

The proposed regulations outline the elements that an institution must include in its statement of policy describing its emergency response and evacuating procedures in its annual security report to include the following:

Procedures to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat occurring on the campus.

A description of the process that (1) confirms that there is a significant emergency or dangerous situation, (2) determines the appropriate segment or segments of the campus community to receive a notification, (3) determines the content of the notification, and (4) initiates the notification system.

A statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing the notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency.

A list of the titles of the persons or organizations responsible for carrying out the actions proposed.

Procedures for disseminating emergency information to the larger community.

Procedures for testing its emergency response and evacuation procedures on at least an annual basis with at least one test per calendar year, and be documented, including a description of the exercise, the date, time, and if it was announced or unannounced.

We estimate that the proposed regulations will increase burden for institutions by 11,390 hours in OMB Control Number 1845–0022.

Missing Student Procedure

Section 668.41(a)—Definition of On-Campus Student Housing Facility

The proposed regulations in § 668.41(a) would add a definition of the term *on-campus student housing facility* to mean a dormitory or other residential facility for students that is located on an institution's campus.

The proposed definition would be added to clarify what is meant by *on-campus student housing facility* and to link the meaning of ''on-campus'' to the existing regulatory definition of *campus* in § 668.46(a), which is used for crime reporting under § 668.46(c). The proposed change is to a definition and does not impact burden.

While the current regulations point to both OMB 1845–0004 and OMB 1845–0010, OMB 1845–0010 has recently been discontinued. We estimate that there is no change in burden associated with this section of the regulations as reported under OMB Control Number 1845–0004.

Section 668.46(b)—Annual Security Report

The proposed regulations in § 668.46(b) require an institution to include its missing student notification policy and procedures in its annual security report. This would be required beginning with the annual security report distributed by October 1, 2010.

We estimate that the proposed regulations will increase burden for institutions by 456 hours for an increase in burden in OMB Control Number 1845–0022.

Section 668.46(h)—Missing Student Notification Policy

The proposed regulation in § 668.46(h) implements the new statutory requirements, specifying that a statement of policy regarding missing student notification for students residing in on-campus student housing facilities must include:

A list of the titles of the persons or organizations to which students, employees, or other individuals should report that a student has been missing for 24 hours;

A requirement that any official missing student report be immediately referred to the institution's police or campus security department or, if not applicable, to the local law enforcement agency with jurisdiction in the area;

The option for each student to identify a contact person to be notified if the student is determined missing by the institutional police or campus security department, or the local law enforcement agency; and

A disclosure that contact information will be registered and maintained confidentially.

The proposed regulation further requires an institution to advise students who are under 18 and not emancipated that if the student is missing it will notify a custodial parent or guardian in addition to any contact person designated by the student. All students must also be advised that, regardless of whether they name a contact person, the institution must notify the local law enforcement agency that the student is missing, unless the local law enforcement was the entity that determined that the student is missing.

The proposed regulations reflect the new statutory requirements. These regulations do not preclude the institution from contacting the student's contact person or the parent immediately upon determination that the student has been missing for 24 hours.

We estimate that the proposed regulations will increase burden for institutions by 2,423 hours for an increase in burden in OMB Control Number 1845–0022.

Fire Safety Standards

Section 668.41(e)—Annual Fire Safety Report

The proposed regulations provide that institutions that maintain an on-campus student housing facility must distribute an annual fire safety report and to create publication requirements for the annual fire safety report that are similar to the long-standing rules for the annual security report.

The proposed regulations allow an institution to publish the annual security report and the annual fire safety

report together, as long as the title of the document clearly states that it contains both the annual security report and the annual fire safety report. If an institution chooses to publish the reports separately, it would have to include information in each of the two reports about how to directly access the other report.

While the current regulations point to both OMB 1845–0004 and OMB 1845–0010, OMB 1845–0010 has recently been discontinued. The burden associated with the data collection and reporting for the annual fire safety report is reflected in § 668.49 as reported under OMB Control Number 1845–NEW3.

Section 668.49—Annual Fire Safety Report

The proposed regulations define the following terms relevant to the fire safety reporting requirements: Cause of fire; Fire; Fire drill; Fire-related injury; Fire-related death; Fire-safety system; and Value of property damage.

The proposed regulation requires an institution to report to the public, the statistics that it submits to the Department in its annual fire safety report. The institution would have to provide data for the three most recent calendar years for which data are available. The first full report to contain the full three years of data would be the report due on October 1, 2012.

The proposed regulations outline the elements that an institution must disclose in its annual fire safety report, including: Fire statistics; A description of each on-campus student housing facility fire safety system; The number of regular, mandatory, supervised fire drills held during the previous calendar year; Policies or rules on portable electrical appliances, smoking, and open flames in student housing facilities; Procedures for student housing evacuation in the case of a fire; Policies on fire safety education and training programs provided to students, faculty, and staff; A list of the titles of each person or organization to which students and employees should report that a fire has occurred; and Plans for future improvements in fire safety.

The proposed regulations specify that an institution that maintains an on-campus student housing facility must maintain a written and easily understood fire log that records, by the date that the fire was reported (as opposed to by the date that the fire occurred), any fire that occurred in an on-campus student housing facility. The log would have to include the nature, date, time, and general location of each fire, and require that the log be available for public. These proposed regulations also implement the statutory requirement that an institution make an annual report to the campus community on the fires recorded in the fire log; however, this requirement may be satisfied by the annual fire safety report described in proposed § 668.49(b).

We estimate that the proposed regulations will increase burden for institutions by 7,283 hours in OMB Control Number 1845–NEW3.

Financial Assistance for Students With Intellectual Disabilities

Section 600.5—Proprietary Institution of Higher Education

The proposed regulation in § 600.5(a)(5)(i)(B)(2)(ii) defines a proprietary institution of higher education as one that may have a comprehensive transition and postsecondary program as an eligible program when it is approved by the Secretary. The proposed change in the definition of an eligible program does not impact burden.

While the current regulations in § 600.5 point to OMB 1840–0098, this information collection has been discontinued and redesignated to 1845–0012. We estimate that there is no change in burden associated with this proposed change in the regulations.

Section 668.8—Eligible Program

The proposed regulation in § 668.8(n) defines a comprehensive transition and postsecondary program as an eligible program when it is approved by the Secretary. The proposed change in the definition of an eligible program does not impact burden.

While the current regulations in § 668.8 point to OMB 1845–0537, this collection package has been discontinued; we estimate that there is no change in burden associated with this proposed change in the regulations.

Section 668.232—Program Eligibility

The proposed regulations require an institution that wishes to provide a comprehensive transition and postsecondary program to apply and receive approval from the Secretary. The proposed regulations outline the elements that an institution must include in its application, including: A detailed description of the comprehensive transition and postsecondary program; The policy for determining whether a student enrolled in the program is making satisfactory academic progress; A statement of the number of weeks of instructional time and the number of semester or quarter credit hours or clock hours in the program; A description of the educational credential offered or identified outcome or outcomes established by the institution for all students enrolled in the program; A copy of the letter or notice sent to the institution's accrediting agency informing the agency of its comprehensive transition and postsecondary program; and Any other information the Department may require. We estimate that the proposed regulations will increase burden for institutions by 66 hours in OMB Control Number 1845–NEW4.

Section 668.233—Student Eligibility

The proposed regulations in § 668.233 provide that a student with intellectual disabilities enrolled in a comprehensive transition and postsecondary program may be eligible for title IV, HEA program assistance under the Federal Pell grant, FSEOG, and FWS programs if: The student is making satisfactory academic program in accordance with the institution's published standards for students enrolled in the comprehensive transition and postsecondary program; and The institution obtains a record from a local educational agency that the student is or was eligible for FAPE under IDEA. If the FAPE record does not indicate that the student has an intellectual disability, the institution would have to obtain documentation from another source that identifies the intellectual disability.

We estimate that the proposed regulations will increase burden for institutions by 768 hours in OMB Control Number 1845–NEW4.

Section 668.43(a)(7)—Institutional Information

The proposed regulation changes the phrase ''any special facilities and services'' to ''the services and facilities,'' and replaces the phrase ''disabled students'' with ''students with disabilities.'' The proposed changes would also clarify that a description of services and facilities for students with disabilities must also contain the services and facilities available for students with intellectual disabilities.

We estimate that the proposed regulations will increase burden for institutions by 44 hours in OMB Control Number 1845–0022.

Federal Work Study Programs

Section 675.16—Conforming FWS Payment Requirements to the Cash Management Regulations

The proposed regulations in § 675.16(b)(1)(ii) and (b)(2), amend the FWS regulations in three ways regarding

the use of current award year FWS funds to pay prior award year charges. First, the amount of prior award year charges that could be paid with current award year FWS funds would increase to not more than $200. Second, the FWS provision that allows an institution to pay for prior award year charges of $100 or more would be removed. Finally, we clarify that the $200 limit applies to all title IV, HEA program funds that an institution uses to pay prior-year charges. These changes to conform the FWS payment requirements to the current cash management regulations do not impact burden.

We estimate that there is no change in burden associated with this section of the regulations under OMB Control Number 1845–0019.

TEACH Grant Program

Section 686.41—Period of Suspension

The proposed regulations in § 686.41 provide that a TEACH Grant recipient who is called or ordered to active military duty (or his or her representative) may request a suspension of the eight-year period in increments not to exceed three years. Once the recipient has exceeded the 3-year suspension period, the recipient (or his or her representative) may request a discharge of all or a portion of his or her teaching service obligation.

We estimate that the proposed regulations will increase burden for institutions in OMB Control Number 1845–0083. The Department will submit an 83–C incorporating the changes after the final regulations have published.

Section 686.42—Discharge of Agreement To Serve

The proposed regulations in § 686.42 provide that the recipient may qualify for a proportional discharge of his or her service obligation based on the number of years the recipient has been called or ordered to active military duty.

To obtain the discharge, the recipient (or his or her representative) would be required to provide the Department:

A written statement from his or her commanding or personnel officer certifying that the recipient is on active duty status in the Armed Forces, the date on which that service began, and the date the service is expected to end; and a copy of his or her official military orders and military identification.

The Department would notify a TEACH Grant recipient of the decision reached on his or her request for a partial or full discharge of the teaching service obligation. The grant recipient would be responsible for fulfilling any teaching service obligation that is not discharged.

We estimate that the proposed regulations will increase burden for institutions in OMB Control Number 1845–0083. The Department will submit an 83–C incorporating the changes after the final regulations have published.

Federal Pell Grant Program

Two Federal Pell Grants in an Award Year

Section 690.67(a)—Student Eligibility for a Second Scheduled Award

The proposed regulations would amend § 690.67 to provide that a student would be eligible for a second Scheduled Award if the student has earned in an award year at least the credit or clock hours of the first academic year of the student's eligible program, and is enrolled as at least a half-time student in a program leading to a bachelor's or associate degree or other recognized educational credential (such as a postsecondary certificate or diploma), except as provided for students with intellectual disabilities. To the extent that the institution will be reporting these second scheduled award Pell disbursements via the Common Origination and Delivery (COD) system, there will be some additional burden for institutions.

We estimate that the proposed regulations will increase burden for institutions by 47,432 hours in OMB Control Number 1845–NEW5.

Section 690.67(b)—Transfer Students

The proposed regulations in § 690.67(b) would provide that an institution determine the credit or clock hours that a transfer student has earned at a prior institution during the award year based on the Federal Pell Grant disbursements that the student received at the prior institution during the award year in relation to the student's Scheduled Award at that prior institution. The credit or clock hours that the student would be considered to have earned would be in the same proportion to credit or clock hours in the current institution's academic year as the disbursements that the student has received at the prior institution in the award year are in proportion to the student's Scheduled Award at the prior institution.

To the extent that the institution will be reviewing the transfer records of these students and subsequently reporting second scheduled award Pell disbursements via the Common Origination and Delivery (COD) system, there will be some additional burden for institutions.

We estimate that the proposed regulations will increase burden for institutions by 14,400 hours in OMB Control Number 1845–NEW5.

Section 690.67(c)—Special Circumstances

The proposed regulations in § 690.67(c) would provide that a financial aid administrator may waive the requirement that a student complete the credit or clock hours in the student's first academic year in the award year due to circumstances beyond the student's control. The financial aid administrator would be required to make and document the determination on an individual basis.

To the extent that the institution will be documenting these special circumstances and subsequently awarding second Pell grants, the institutions will be reporting the second Pell disbursements via the Common Origination and Delivery (COD) system, there will be some additional burden for institutions.

We estimate that the proposed regulations will increase burden for institutions by 3,429 hours in OMB Control Number 1845–NEW5.

Section 690.67(d)—Nonapplicable credit or clock hours

The proposed regulation in § 690.67(d) states that, in determining a student's eligibility for a second Scheduled Award in an award year, an institution may not use credit or clock hours that the student received based on Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or similar competency measures.

To the extent that the institution will be making determinations about the applicability of AP, IB, or other non-applicable courses, institution will subsequently award second Pell grants and thereafter report Pell disbursements via the Common Origination and Delivery (COD) system, thus there will be some additional reporting burden for institutions.

We estimate that the proposed regulations will increase burden for institutions by 2,032 hours in OMB Control Number 1845–NEW5.

Section 690.64—Payment Period in Two Award Years

In this proposed regulation in § 690.64, if a student is enrolled in a crossover payment period as a half-time or less-than-half-time student, the current requirements generally would apply.

If a student is enrolled as a three-quarter-time or full-time student, an institution must consider the payment period to be in the award year in which

the student would receive the greater payment for the payment period based on the information available at the time that the student's Federal Pell Grant is initially calculated. If the institution subsequently receives information that the student would receive a greater payment for the payment period by reassigning the payment to the other award year, the institution would be required to reassign the payment to the award year providing the greater payment.

A student may request that the institution place the payment period in the award year that can be expected to result in the student receiving a greater amount of Federal Pell Grants over the two award years in which the payment period is scheduled to occur. If the student makes that request, the institution must assign the payment period to that award year.

To the extent that the institution will be reviewing enrollment status in each of the two award years and making determinations about which award year must be used and subsequently reporting these second scheduled award Pell disbursements via the Common Origination and Delivery (COD) system, there will be some additional burden for institutions.

We estimate that the proposed regulations will increase burden for institutions by 33,881 hours in OMB Control Number 1845–NEW5.

Section 690.63(h)—Payment From Two Scheduled Awards

Under the proposed regulations in § 690.63(h), if a student is eligible for the remaining portion of a first Scheduled Award in an award year and for a payment from the second Scheduled Award, the student's payment would be calculated using the annual award for his or her enrollment status for the payment period. The student's payment would be the remaining amount of the first Scheduled Award being completed plus an amount from the second Scheduled Award in the award year up to the total amount of the payment for the payment period.

We estimate that the proposed regulations will increase burden for institutions by 8,471 hours in OMB Control Number 1845–NEW5.

Section 690.75(e)—Maximum Pell Grant for Children of Soldiers

Under the proposed regulation in § 690.75(e), a student whose parent or guardian was a member of the Armed Forces of the United States and died as a result of performing military service in Iraq or Afghanistan after September 11, 2001, would automatically receive a zero EFC for purposes of the Federal Pell Grant Program if he or she was under 24 years old or enrolled in an institution of higher education at the time of the parent's or guardian's death.

We estimate that the proposed regulations will increase burden for institutions by 48 hours in OMB Control Number 1845–NEW6.

Part 692 Leveraging Educational Assistance Partnership Program

Section 692.21(k)—Notification to Students of LEAP Grant Funding Sources

The proposed regulations require that the State program notify eligible students that grants under the LEAP Grant Program are (1) LEAP Grants and (2) are funded by the Federal Government, the State, and, where applicable, other contributing partners.

The implementation of the proposed regulations for the changes to LEAP and the introduction of the GAP program will increase burden to States. We estimate that the burden in these proposed regulations will be associated with the application and performance report forms under development. These forms will be developed after the final regulations are published to insure that the forms comport with the finalized requirements. The new forms will be submitted to OMB for approval under OMB Control Number 1845–NEW7.

Section 692.100—Requirements a State Must Meet To Receive GAP Funds

The proposed regulations in § 692.100 describe the requirements that a State must meet to receive an allotment under this program including submitting an application on behalf of a partnership and serving as the primary administrative unit of the partnership. Under proposed § 692.100(a)(6), a State must include in its application the steps it plans to take to ensure, to the extent practicable, that students who receive a LEAP Grant under GAP would persist to degree completion.

Under proposed § 692.100(a)(8) a State GAP Program is required to notify eligible students that the grants they receive under GAP are LEAP Grants and that the grants are funded by the Federal Government, the State and where applicable, other contributing partners.

The implementation of the proposed regulations for the changes to LEAP and the introduction of the GAP program will increase burden to States. We estimate that the burden in these proposed regulations will be associated with the application and performance report forms under development. These forms will be developed after the final regulations are published to insure that the forms comport with the finalized requirements. The new forms will be submitted to OMB for approval under OMB Control Number 1845–NEW7.

Section 692.101—Requirements That Must Be Met by a State Partnership

The proposed regulations in § 692.101(b)(2) provide that a degree-granting institution of higher education that is in a partnership under the GAP Program must recruit, admit, and provide institutional grant aid to participating eligible students as agreed to with the State agency.

The implementation of the proposed regulations for the changes to LEAP and the introduction of the GAP program will increase burden to States. We estimate that the burden in these proposed regulations will be associated with the application and performance report forms under development. These forms will be developed after the final regulations are published to insure that the forms comport with the finalized requirements. The new forms will be submitted to OMB for approval under OMB Control Number 1845–NEW7.

Section 692.111—Purposes for Which a State May Use Its GAP Grant

The proposed regulations in § 692.111 provide that each State receiving an allotment shall annually notify potentially eligible students in grades 7 through 12 in the State, and their families, of their potential eligibility for student financial assistance, including a LEAP Grant under GAP, to attend a LEAP-participating institution of higher education.

The notice shall include information about early information and intervention, mentoring, or outreach programs available to the student. The notice shall provide a nonbinding estimate of the total amount of financial aid that an eligible student with a similar income level may expect to receive, including an estimate of the amount of a LEAP Grant under GAP and an estimate of the amount of grants, loans, and all other available types of aid from the major Federal and State financial aid programs. The proposed notice will also include any additional requirements that the State may require for receipt of a LEAP Grant under GAP.

The implementation of the proposed regulations for the changes to LEAP and the introduction of the GAP program will increase burden to States. We estimate that the burden in these proposed regulations will be associated with the application and performance report forms under development. These forms will be developed after the final

regulations are published to insure that the forms comport with the finalized requirements. The new forms will be submitted to OMB for approval under OMB Control Number 1845–NEW7.

Consistent with the discussion above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected, and the collections that the Department will submit to the Office of Management and Budget for approval and public comment under the Paperwork and Reduction Act.

Regulatory section	Information section	Collection
668.14(b)(31)	Providing that an institution that conducts a teach-out at a site of a closed institution may, under certain conditions, establish that site as an additional location (see sections 487(f) and 498 of the HEA).	OMB 1845–0022. There will be an increase in burden of 160 hours.
668.18	Establishing requirements under which an institution must readmit servicemembers to the same academic status they had when they last attended the institution (see section 484C of the HEA).	OMB 1845–NEW1. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 1,513 hours.
668.23(d)(4)	Adds new requirements to include in the audited financial statement footnote the non-Federal and Federal revenue that was included in the 90/10 calculation.	OMB 1845–0038. There will be an increase in burden of 165 hours.
668.28	Establishing new requirements for determining how proprietary institutions calculate the amount and percent of revenue derived from sources other than title IV, HEA program funds (see section 487(d) of the HEA).	OMB 1845–NEW2. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 3,088 hours.
668.43(a)(5)(iv)	Expanding the information that an institution must make available to prospective and enrolled students to include a description of any plans the institution has to improve its academic program (see section 485(a) of the HEA).	OMB 1845–0022. There will be an increase in burden of 968 hours.
668.14(b)(30), 668.43(a)(10)	Providing that an institution must certify that it has plans to effectively combat unauthorized distribution of copyrighted material and will offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property (see sections 485(a)(1) and 487(a) of the HEA).	OMB 1845–0022. There will be an increase in burden of 92,544 hours.
668.41	Expanding the information that institutions must make available to prospective and enrolled students to include information on: the employment and placement of students, and the retention rates of first-time, full-time undergraduate students.	OMB 1845–0004. There will be an increase in burden of 8,541 hours.
668.45	Expanding the information that institutions must make available to prospective students to include completion and graduation rate data that is disaggregated by gender, race, and grant or loan assistance (see section 485(a) of the HEA).	OMB 1845–0004. There will be an increase in burden of 7,488 hours.
668.46(c)(3), (e), (g)	Expanding the list of crimes that institutions must include in the hate crimes statistics reported to the Department. Requiring institutions to include in the annual security report a statement of emergency response and evacuation procedures (see section 485(f) of the HEA).	OMB 1845–0022. There will be an increase in burden of 18,509 hours.
668.41(a)	Requiring institutions that provide on-campus housing facilities to develop and make available a missing student notification policy and allow students who reside on campus to confidentially register contact information (see section 485(j) of the HEA).	OMB 1845–0004. There is no change in burden associated with this section of the proposed regulations.
668.46(b), (h)	Requiring institutions that provide on-campus housing facilities to develop and make available a missing student notification policy and allow students who reside on campus to confidentially register contact information (see section 485(j) of the HEA).	OMB 1845–0022. There will be an increase in burden of 2,879 hours.
668.41(e)	Establishing requirements for institutions that maintain on-campus housing facilities to publish annually a fire safety report, maintain a fire log, and report fire statistics to the Department (see section 485(i) of the HEA).	OMB 1845–0004. There is no change in burden associated with this section of the proposed regulations.

Regulatory section	Information section	Collection
668.49	Establishing requirements for institutions that maintain on-campus housing facilities to publish annually a fire safety report, maintain a fire log, and report fire statistics to the Department (see section 485(i) of the HEA).	OMB 1845–NEW3. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 7,283 hours.
668.232	Expanding the eligibility for Federal Pell Grant, FWS, and FSEOG Program funds to students with intellectual disabilities (see sections 484(s) and 760 of the HEA).	OMB 1845–NEW4. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 66 hours.
668.233	Expanding the eligibility for Federal Pell Grant, FWS, and FSEOG Program funds to students with intellectual disabilities (see sections 484(s) and 760 of the HEA).	OMB 1845–NEW4. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 768 hours.
688.43(a)(7)	Requires that institutions report a description of services and facilities for students with intellectual disabilities.	OMB 1845–0022. There will be an increase in burden of 44 hours.
686.41, 686.42	Establishing extenuating circumstances under which a TEACH Grant recipient may be excused from fulfilling all or part of his or her service obligation (see section 420N(d)(2) of the HEA).	OMB 1845–0083. Changes will be incorporated into the Agreement to Serve form.
690.67, 690.64, 690.63(h)	Establishing requirements under which students may receive up to two Federal Pell Grant Scheduled Awards during a single award year (see section 401(b)(5)(A) of the HEA).	OMB 1845–NEW5. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 109,645 hours.
690.75(e)	Providing the maximum Federal Pell Grant eligibility to a student whose parent was in the armed forces and died in Iraq or Afghanistan if the student was under 24 years old or enrolled in an institution of higher education at the time the parent died (see section 401(F)(4) of the HEA).	OMB 1845–NEW6. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 48 hours.
692.21, 692.100, 692.101, 692.111	Requiring the State program to notify students that grants are LEAP Grants that are funded by the Federal Government, the State, and for LEAP Grants to students under the new Grants for Access and Persistence (GAP) Program, other contributing partners (see section 415C(b) of the HEA). Establishing the activities, awards, allotments to States, matching funds requirements, consumer information requirements, application requirements, and other requirements needed to begin and continue participating in the GAP Program (see sections 415B and 415E of the HEA).	OMB 1845–NEW7. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments.

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by e-mail to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Numbers: 84.063 Federal Pell Grant Program; 84.033 Federal Work-Study Program; 84.379 TEACH Grant Program; 84.069 LEAP)

List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 675

Colleges and universities, Employment, Grant programs-education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 686

Administrative practice and procedure, Colleges and universities, Education, Elementary and secondary education, Grant programs-education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 690

Colleges and universities, Education of disadvantaged, Grant programs-education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 692

Colleges and universities, Grant programs-education, Reporting and recordkeeping requirements, Student aid.

Dated: July 30, 2009.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 600, 668, 675, 686, 690, and 692 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

2. Section 600.2 is amended by:

A. Revising paragraph (1)(i) of the definition of *educational program.*

B. Adding, in alphabetical order, a definition for *teach-out plan.*

C. Revising the authority citation at the end of the section.

The revisions and addition read as follows:

§ 600.2 Definitions.

* * * * *

Educational program: (1) * * *

(i) Leads to an academic, professional, or vocational degree, or certificate, or other recognized educational credential, or is a comprehensive transition and postsecondary program, as described in 34 CFR part 668, subpart O; and

* * * * *

Teach-out plan: A written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides 100 percent of at least one program, ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency, a teach-out agreement between institutions.

* * * * *

(Authority: 20 U.S.C. 1071 et seq., 1078–2, 1088, 1091, 1094, 1099b, 1099c, 1141; 26 U.S.C. 501(c))

3. Section 600.4 is amended by:

A. Revising paragraph (a)(4).

B. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 600.4 Institution of higher education.

(a) * * *

(4)(i) Provides an educational program—

(A) For which it awards an associate, baccalaureate, graduate, or professional degree;

(B) That is at least a two-academic-year program acceptable for full credit toward a baccalaureate degree; or

(C) That is at least a one-academic-year training program that leads to a certificate, degree, or other recognized educational credential and prepares students for gainful employment in a recognized occupation; and

(ii) May provide a comprehensive transition and postsecondary program, as described in 34 CFR part 668, subpart O; and

* * * * *

(Authority: 20 U.S.C. 1091, 1094, 1099b, 1141(a))

4. Section 600.5 is amended by:

A. Revising paragraph (a)(5).

B. In paragraph (a)(6), adding the word ''and'' after the punctuation '';''.

C. In paragraph (a)(7), removing the word ''; and'' and adding, in its place, the punctuation ''.''.

D. Removing paragraph (a)(8).

E. Removing paragraphs (d) through (g).

F. Redesignating paragraph (h) as paragraph (d).

G. Adding a new paragraph (e).

H. Revising the OMB control number and authority citation at the end of the section.

The revisions and addition read as follows:

§ 600.5 Proprietary institution of higher education.

(a) * * *

(5)(i)(A) Provides an eligible program of training, as defined in 34 CFR 668.8, to prepare students for gainful employment in a recognized occupation; or

(B)(*1*) Provides a program leading to a baccalaureate degree in liberal arts, as defined in paragraph (e) of this section, and has provided that program since January 1, 2009; and

(*2*) Is accredited by a recognized regional accrediting agency or association, and has continuously held such accreditation since October 1, 2007, or earlier; and

(ii) May provide a comprehensive transition and postsecondary program for students with intellectual disabilities, as provided in 34 CFR part 668, subpart O;

* * * * *

(e) For purposes of this section, a ''program leading to a baccalaureate degree in liberal arts'' is a program that the institution's recognized regional accreditation agency or organization determines, is a general instructional program in the liberal arts subjects, the humanities disciplines, or the general curriculum, falling within one or more of the following generally-accepted instructional categories comprising such programs, but including only instruction in regular programs, and excluding independently-designed programs, individualized programs, and unstructured studies:

(1) A program that is a structured combination of the arts, biological and physical sciences, social sciences, and humanities, emphasizing breadth of study.

(2) An undifferentiated program that includes instruction in the general arts or general science.

(3) A program that focuses on combined studies and research in the humanities subjects as distinguished from the social and physical sciences, emphasizing languages, literatures, art, music, philosophy, and religion.

(4) Any single instructional program in liberal arts and sciences, general studies, and humanities not listed in paragraph (e)(1) through (e)(3) of this section.

(Approved by the Office of Management and Budget under control number 1845–0012)

(Authority: 20 U.S.C. 1088, 1091)

5. Section 600.6 is amended by:

A. Revising paragraph (a)(4).

B. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 600.6 Postsecondary vocational institution.

(a) * * *

(4)(i) Provides an eligible program of training, as defined in 34 CFR 668.8, to prepare students for gainful employment in a recognized occupation; and

(ii) May provide a comprehensive transition and postsecondary program for students with intellectual disabilities, as provided in 34 CFR part 668, subpart O;

* * * * *

(Authority: 20 U.S.C. 1088, 1091, 1094(c)(3))

6. Section 600.32 is amended by:

A. In paragraph (a), removing the words ''(b) and (c)'' and adding, in their place, the words ''(b), (c), and (d)''.

B. Redesignating paragraph (d) as paragraph (e).

C. Adding a new paragraph (d).

D. Revising the authority citation at the end of the section.

The addition and revision read as follows:

§ 600.32 Eligibility of additional locations.

* * * * *

(d)(1) An institution that conducts a teach-out at a site of a closed institution may apply to have that site approved as an additional location if—

(i) The closed institution ceased operations as result of an action taken by the Secretary to limit, suspend, or terminate the institution's participation under § 600.41 or subpart G of this part, or as a result of an emergency action taken by the Secretary under 34 CFR 668.83; and

(ii) The teach-out plan required under 34 CFR 668.14(b)(31) is approved by the closed institution's accrediting agency.

(2)(i) An institution that conducts a teach-out and is approved to add an additional location described in paragraph (d)(1) of this section—

(A) Does not have to meet the two-year requirement of § 600.5(a)(7) or § 600.6(a)(6) for the additional location described in paragraph (d)(1) of this section;

(B) Is not responsible for any liabilities of the closed institution as provided under paragraphs (c)(1) and (c)(2) of this section if the institutions are not related parties and there is no commonality of ownership or management between the institutions, as described in 34 CFR 668.188(b) and 34 CFR 668.207(b); and

(C) Will not have the default rate of the closed institution included in the calculation of its default rate, as would otherwise be required under 34 CFR 668.184 and 34 CFR 668.203, if the institutions are not related parties and there is no commonality of ownership or management between the institutions, as described in 34 CFR 668.188(b) and 34 CFR 668.207(b).

(ii) As a condition for approving an additional location under paragraph (d)(1) of this section, the Secretary may require that payments from the institution conducting the teach-out to the owners or related parties of the closed institution, are used to satisfy any liabilities owed by the closed institution.

* * * * *

(Authority: 20 U.S.C. 1088, 1099c, 1141)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

7. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c-1, unless otherwise noted.

8. Section 668.8 is amended by:

A. Revising paragraph (n).

B. Removing the OMB control number at the end of the section.

The revision reads as follows:

§ 668.8 Eligible program.

* * * * *

(n) For title IV, HEA program purposes, *eligible program* includes a direct assessment program approved by the Secretary under § 668.10 and a comprehensive transition and postsecondary program approved by the Secretary under § 668.232.

* * * * *

9. Section 668.13(c) is revised to read as follows:

§ 668.13 Certification procedures.

* * * * *

(c) *Provisional certification.* (1)(i) The Secretary may provisionally certify an institution if—

(A) The institution seeks initial participation in a Title IV, HEA program;

(B) The institution is an eligible institution that has undergone a change in ownership that results in a change in control according to the provisions of 34 CFR part 600;

(C) The institution is a participating institution—

(*1*) That is applying for a certification that the institution meets the standards of this subpart;

(*2*) That the Secretary determines has jeopardized its ability to perform its financial responsibilities by not meeting the factors of financial responsibility under § 668.15 or the standards of administrative capability under § 668.16; and

(*3*) Whose participation has been limited or suspended under subpart G of this part, or voluntarily enters into provisional certification;

(D) The institution seeks a renewal of participation in a title IV, HEA program after the expiration of a prior period of participation in that program; or

(E) The institution is a participating institution that was accredited or preaccredited by a nationally recognized accrediting agency on the day before the Secretary withdrew the Secretary's recognition of that agency according to the provisions contained in 34 CFR part 603.

(ii) A proprietary institution's certification automatically becomes provisional if it does not derive at least 10 percent of its revenue for any fiscal year from sources other than title IV, HEA program funds, as required under § 668.14(b)(16).

* * * * *

10. Section 668.14 is amended by:

A. Adding paragraph (b)(16).

B. In paragraph (b)(25)(ii), removing the word ''and'' that appears after the punctuation '';''.

C. Adding paragraph (b)(30).

D. Adding paragraph (b)(31).

E. Revising the OMB control number at the end of the section.

The additions and revision read as follows:

§ 668.14 Program participation agreement.

* * * * *

(b) * * *

(16) For a proprietary institution, the institution will derive at least 10

percent of its revenues for each fiscal year from sources other than title IV, HEA program funds, as provided in § 668.28(a) and (b), or be subject to sanctions described in § 668.28(c);

* * * * *

(30) The institution—

(i) Has developed and implemented written plans to effectively combat the unauthorized distribution of copyrighted material by users of the institution's network, without unduly interfering with educational and research use of the network, that include—

(A) The use of one or more technology-based deterrents;

(B) Mechanisms for educating and informing its community about appropriate versus inappropriate use of copyrighted material, including that described in § 668.43(a)(10);

(C) Procedures for handling unauthorized distribution of copyrighted material, including disciplinary procedures; and

(D) Procedures for periodically reviewing the effectiveness of the plans to combat the unauthorized distribution of copyrighted materials by users of the institution's network using relevant assessment criteria. No particular technology measures are favored or required for inclusion in an institution's plans, and each institution retains the authority to determine what its particular plans for compliance with paragraph (b)(30) of this section will be, including those that prohibit content monitoring; and

(ii) Will, in consultation with the chief technology officer or other designated officer of the institution—

(A) Periodically review the legal alternatives for downloading or otherwise acquiring copyrighted material;

(B) Make available the results of the review in paragraph (b)(30)(ii)(A) of this section to its students through a Web site or other means; and

(C) To the extent practicable, offer legal alternatives for downloading or otherwise acquiring copyrighted material, as determined by the institution; and

(31) The institution will submit a teach-out plan to its accrediting agency in compliance with 34 CFR 602.24(c), and the standards of the institution's accrediting agency upon the occurrence of any of the following events:

(i) The Secretary initiates the limitation, suspension, or termination of the participation of an institution in any title IV, HEA program under 34 CFR 600.41 or subpart G of this part or initiates an emergency action under § 668.83.

(ii) The institution's accrediting agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation of the institution.

(iii) The institution's State licensing or authorizing agency revokes the institution's license or legal authorization to provide an educational program.

(iv) The institution intends to close a location that provides 100 percent of at least one program.

(v) The institution otherwise intends to cease operations.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0022)

* * * * *

11. Section 668.18 is added to subpart B of part 668 to read as follows:

§ 668.18 Readmission requirements for servicemembers.

(a) *General.* (1) An institution may not deny readmission to a person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform, service in the uniformed services on the basis of that membership, application for membership, performance of service, application for service, or obligation to perform service.

(2)(i) An institution must promptly readmit to the institution a person described in paragraph (a)(1) of this section with the same academic status as the student had when the student last attended the institution or was last admitted to the institution, but did not begin attendance because of that membership, application for membership, performance of service, application for service, or obligation to perform service.

(ii) ''Promptly readmit'' means that the institution must readmit the student into the next class or classes in the student's program beginning after the student provides notice of his or her intent to reenroll, unless the student requests a later date of readmission or unusual circumstances require the institution to admit the student at a later date.

(iii) To readmit a person with the ''same academic status'' means that the institution admits the student—

(A) To the same program to which he or she was last admitted by the institution or, if that exact program is no longer offered, the program that is most similar to that program, unless the student requests or agrees to admission to a different program;

(B) At the same enrollment status that the student last held at the institution, unless the student requests or agrees to admission at a different enrollment status;

(C) With the same number of credit hours or clock hours completed previously by the student, unless the student is readmitted to a different program to which the completed credit hours or clock hours are not transferable;

(D) With the same academic standing (*e.g.,* with the same satisfactory academic progress status) the student previously had;

(E)(*1*) If the student is readmitted to the same program, for the first academic year in which the student returns, assessing the same institutional charges that the student was or would have been assessed for the academic year during which the student left the institution; or

(*2*) If the student is admitted to a different program, and for subsequent academic years for a student admitted to the same program, assessing no more than the institutional charges that other students in the program are assessed for that academic year; and

(F) Waiving charges for equipment required in lieu of equipment the student paid for when the student was previously enrolled.

(iv)(A) If the institution determines that the student is not prepared to resume the program with the same academic status at the point where the student left off, or will not be able to complete the program, the institution must make reasonable efforts to help the student become prepared or to enable the student to complete the program including, but not limited to, providing refresher courses at no extra cost and allowing the student to retake a pretest at no extra cost.

(B) The institution is not required to readmit the student on his or her return if—

(*1*) After reasonable efforts by the institution, the institution determines that the student is not prepared to resume the program at the point where he or she left off;

(*2*) After reasonable efforts by the institution, the institution determines that the student is unable to complete the program; or

(*3*) The institution determines that there are no reasonable efforts the institution can take to prepare the student to resume the program at the point where he or she left off or to enable the student to complete the program;

(C)(*1*) ''Reasonable efforts'' means actions that do not place an undue hardship on the institution.

(*2*) ''Undue hardship'' means an action requiring significant difficulty or expense.

(D) The institution carries the burden to prove by a preponderance of the evidence that the student is not prepared to resume the program with the same academic status at the point where the student left off, or that the student will not be able to complete the program.

(3) This section applies to an institution that has continued in operation since the student ceased attending or was last admitted to the institution but did not begin attendance, notwithstanding any changes of ownership of the institution since the student ceased attendance.

(4) The requirements of this section supersede any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this section.

(b) *Service in the uniformed services.* For purposes of this section, service in the uniformed services means service, whether voluntary or involuntary, in the Armed Forces, including service by a member of the National Guard or Reserve, on active duty, active duty for training, or full-time National Guard duty under Federal authority, for a period of more than 30 consecutive days under a call or order to active duty of more than 30 consecutive days.

(c) *Readmission procedures.* (1) Any student whose absence from an institution is necessitated by reason of service in the uniformed services shall be entitled to readmission to the institution if—

(i) Except as provided in paragraph (d) of this section, the student (or an appropriate officer of the Armed Forces or official of the Department of Defense) gives advance oral or written notice of such service to an office designated by the institution, and provides such notice as far in advance as is reasonable under the circumstances;

(ii) The cumulative length of the absence and of all previous absences from that institution by reason of service in the uniformed services, including only the time the student spends actually performing service in the uniformed services, does not exceed five years; and

(iii) Except as provided in paragraph (f) of this section, the student gives oral or written notice of his or her intent to return to an office designated by the institution—

(A) For a student who completes a period of service in the uniformed services, not later than three years after the completion of the period of service; or

(B) For a student who is hospitalized for or convalescing from an illness or injury incurred in or aggravated during the performance of service in the uniformed services, two years after the end of the period that is necessary for recovery from such illness or injury.

(2)(i) An institution must designate one or more offices at the institution that a student may contact to provide notification of service required by paragraph (c)(1)(i) of this section and notification of intent to return required by paragraph (c)(1)(iii) of this section.

(ii) An institution may not require that the notice provided by the student under paragraph (c)(1)(i) or (c)(1)(iii) of this section follow any particular format.

(iii) The notice provided by the student under paragraph (c)(1)(i) of this section—

(A) May not be subject to any rule for timeliness; timeliness must be determined by the facts in any particular case; and

(B) Does not need to indicate whether the student intends to return to the institution.

(iv) For purposes of paragraph (c)(1)(i) of this section, an ''appropriate officer'' is a commissioned, warrant, or noncommissioned officer authorized to give such notice by the military service concerned.

(d) *Exceptions to advance notice.* (1) No notice is required under paragraph (c)(1)(i) of this section if the giving of such notice is precluded by military necessity, such as—

(i) A mission, operation, exercise, or requirement that is classified; or

(ii) A pending or ongoing mission, operation, exercise, or requirement that may be compromised or otherwise adversely affected by public knowledge.

(2) Any student (or an appropriate officer of the Armed Forces or official of the Department of Defense) who did not give advance written or oral notice of service to the appropriate official at the institution in accordance with paragraph (c)(1) of this section may meet the notice requirement by submitting, at the time the student seeks readmission, an attestation to the institution that the student performed service in the uniformed services that necessitated the student's absence from the institution.

(e) *Cumulative length of absence.* For purposes of paragraph (c)(1)(ii) of this section, a student's cumulative length of absence from an institution does not include any service—

(1) That is required, beyond five years, to complete an initial period of obligated service;

(2) During which the student was unable to obtain orders releasing the student from a period of service in the uniformed services before the expiration of the five-year period and such inability was through no fault of the student; or

(3) Performed by a member of the Armed Forces (including the National Guard and Reserves) who is—

(i) Ordered to or retained on active duty under—

(A) 10 U.S.C. 688 (involuntary active duty by a military retiree);

(B) 10 U.S.C. 12301(a) (involuntary active duty in wartime);

(C) 10 U.S.C. 12301(g) (retention on active duty while in captive status);

(D) 10 U.S.C. 12302 (involuntary active duty during a national emergency for up to 24 months);

(E) 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days);

(F) 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions);

(G) 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer);

(H) 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer);

(I) 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member);

(J) 14 U.S.C. 360 (voluntary active duty by retired Coast Guard enlisted member);

(K) 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); or

(L) 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters);

(ii) Ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(iii) Ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10, United States Code;

(iv) Ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the Armed Forces (including the National Guard or Reserve); or

(v) Called into Federal service as a member of the National Guard under chapter 15 of title 10, United States Code, or section 12406 of title 10, United States Code (*i.e.,* called to respond to an invasion, danger of

invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States).

(f) *Notification of intent to reenroll.* A student who fails to apply for readmission within the periods described in paragraph (c)(1)(iii) of this section does not automatically forfeit eligibility for readmission to the institution, but is subject to the institution's established leave of absence policy and general practices.

(g) *Documentation.* (1) A student who submits an application for readmission to an institution under paragraph (c)(1)(iii) of this section shall provide to the institution documentation to establish that—

(i) The student has not exceeded the service limitation in paragraph (c)(1)(ii) of this section; and

(ii) The student's eligibility for readmission has not been terminated due to an exception in paragraph (h) of this section.

(2)(i) Documents that satisfy the requirements of paragraph (g)(1) of this section include, but are not limited to, the following:

(A) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty.

(B) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service.

(C) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority.

(D) Certificate of completion from military training school.

(E) Discharge certificate showing character of service.

(F) Copy of extracts from payroll documents showing periods of service.

(G) Letter from National Disaster Medical System (NDMS) Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.

(ii) The types of documents that are necessary to establish eligibility for readmission will vary from case to case. Not all of these documents are available or necessary in every instance to establish readmission eligibility.

(3) An institution may not delay or attempt to avoid a readmission of a student under this section by demanding documentation that does not exist, or is not readily available, at the time of readmission.

(h) *Termination of readmission eligibility.* A student's eligibility for readmission to an institution under this section by reason of such student's service in the uniformed services terminates upon the occurrence of any of the following events:

(1) A separation of such person from the Armed Forces (including the National Guard and Reserves) with a dishonorable or bad conduct discharge.

(2) A dismissal of a commissioned officer permitted under section 1161(a) of title 10, United States Code by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President.

(3) A dropping of a commissioned officer from the rolls pursuant to section 1161(b) of title 10, United States Code due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a Federal or State penitentiary or correctional institution.

(Approved by the Office of Management and Budget under control number 1845–NEW1)

Authority:

20 U.S.C. 1088 *et seq.*)

12. In 668.23, revise paragraph (d)(4) to read as follows:

§ 668.23 Compliance audits and audited financial statements.

* * * * *

(d) * * *

(4) *Disclosure of title IV, HEA program revenue.* A proprietary institution must disclose in a footnote to its financial statement audit the percentage of its revenues derived from the title IV, HEA program funds that the institution received during the fiscal year covered by that audit. The revenue percentage must be calculated in accordance with § 668.28. The institution must also report in the footnote the non-Federal and Federal revenue by source that was included in the 90/10 calculation.

* * * * *

13. Section 668.28 is added to subpart B of part 668 to read as follows:

§ 668.28 Non-title IV revenue (90/10).

(a) *General.* (1) *Calculating the revenue percentage.* A proprietary institution determines whether it satisfies the requirement in § 668.14(b)(16) that at least 10 percent of its revenue is derived from sources other than title IV, HEA program funds by using the formula in appendix C of this subpart to calculate its revenue percentage for its latest complete fiscal year.

(2) *Cash basis accounting.* Except for institutional loans made to students under paragraph (a)(5)(i) of this section, the institution must use the cash basis of accounting in calculating its revenue percentage.

(3) *Revenue generated from programs and activities.* The institution must consider as revenue only those funds it generates from—

(i) Tuition, fees, and other institutional charges for students enrolled in eligible programs as defined in § 668.8;

(ii) Activities conducted by the institution that are necessary for the education and training of its students provided those activities are—

(A) Conducted on campus or at a facility under the institution's control;

(B) Performed under the supervision of a member of the institution's faculty; and

(C) Required to be performed by all students in a specific educational program at the institution; and

(iii) Funds paid by a student, or on behalf of a student by a party other than the institution, for an education or training program that is not eligible under § 668.8 if the program—

(A) Is approved or licensed by the appropriate State agency;

(B) Is accredited by an accrediting agency recognized by the Secretary under 34 CFR part 602;

(C) Provides an industry-recognized credential or certification, or prepares students to take an examination for an industry-recognized credential or certification issued by an independent third party;

(D) Provides training needed for students to maintain State licensing requirements; or

(E) Provides training needed for students to meet additional licensing requirements for specialized training for practitioners that already meet the general licensing requirements in that field.

(4) *Application of funds.* The institution must presume that any title IV, HEA program funds it disburses, or delivers, to or on behalf of a student will be used to pay the student's tuition, fees, or institutional charges, regardless of whether the institution credits the funds to the student's account or pays the funds directly to the student, except to the extent that the student's tuition, fees, or other charges are satisfied by—

(i) Grant funds provided by non-Federal public agencies or private sources independent of the institution;

(ii) Funds provided under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals who need that training;

(iii) Funds used by a student from a savings plan for educational expenses established by or on behalf of the student if the saving plan qualifies for

special tax treatment under the Internal Revenue Code of 1986; or

(iv) Institutional scholarships as provided under paragraph (a)(5)(iv) of this section.

(5) *Revenue generated from institutional aid.* The institution must include the following institutional aid as revenue:

(i) For loans made to students, including funds advanced to students under installment sales contracts, on or after July 1, 2008 and prior to July 1, 2012, include as revenue the net present value of the loans made to students during the fiscal year, as calculated under paragraph (b) of this section, if the loans—

(A) Are bona fide as evidenced by standalone repayment agreements between the students and the institution that are enforceable promissory notes;

(B) Are issued at intervals related to the institution's enrollment periods;

(C) Are subject to regular loan repayments and collections by the institution; and

(D) Are separate from the enrollment contracts signed by the students.

(ii) For loans made to students before July 1, 2008, include as revenue only the amount of payments made on those loans that the institution received during the fiscal year.

(iii) For loans made to students on or after July 1, 2012, include as revenue only the amount of payments made on those loans that the institution received during the fiscal year.

(iv) For scholarships provided by the institution in the form of monetary aid or tuition discount and based on the academic achievement or financial need of its students, include as revenue the amount disbursed to students during the fiscal year. The scholarships must be disbursed from an established restricted account and only to the extent that the funds in that account represent designated funds from an outside source or income earned on those funds.

(6) *Revenue generated from loan funds in excess of loan limits prior to the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA).* For each student who receives an unsubsidized loan under the FFEL or Direct Loan programs on or after July 1, 2008 and prior to July 1, 2011, the amount of the loan disbursement for a payment period that exceeds the disbursement for which the student would have been eligible for that payment period under the loan limit in effect on the day prior to enactment of the ECASLA is included as revenue from a source other than title IV, HEA program funds but only to the extent that the excess amount pays for tuition, fees, or institutional charges remaining on the student's account after title IV, HEA program funds are applied.

(7) *Funds excluded from revenues.* For the fiscal year, the institution does not include—

(i) The amount of Federal Work Study (FWS) wages paid directly to the student. However, if the institution credits the student's account with FWS funds, those funds are included as revenue;

(ii) The amount of funds received by the institution from a State under the LEAP, SLEAP, or GAP programs;

(iii) The amount of institutional funds used to match title IV, HEA program funds;

(iv) The amount of title IV, HEA program funds refunded or returned under § 668.22, including funds refunded or returned under paragraph (a)(6) of this section; or

(v) The amount the student is charged for books, supplies, and equipment unless the institution includes that amount as tuition, fees, or other institutional charges.

(b) *Net present value (NPV).* (1) As illustrated in appendix C of this subpart, an institution calculates the NPV of the loans it made under paragraph (a)(5)(i) of this section by—

(i) Using the formula, NPV = sum of the discounted cash flows $R^t/(1+i)^t$, where—

(A) The variable ''i'' is the discount rate. For purposes of this section, an institution must use the most recent annual inflation rate as the discount rate;

(B) The variable ''t'' is time or period of the cash flow, in years, from the time the loan entered repayment; and

(C) The variable ''R^t'' is the net cash flow at time or period t; and

(ii) Applying the NPV formula to the loans made during the fiscal year by—

(A) If the loans have substantially the same repayment period, using that repayment period for the range of values of variable ''t''; or

(B) Grouping the loans by repayment period and using the repayment period for each group for the range of values of variable ''t''; and

(C) For each group of loans, as applicable, multiplying the total annual payments due on the loans by the institution's loan collection rate (*e.g.,* the total amount of payments collected divided by the total amount of payments due). The resulting amount is used for variable ''R'' in each period ''t'', for each group of loans that a NPV is calculated.

(2) Instead of performing the calculations in paragraph (b)(1) of this section, using 50 percent of the total amount of loans that the institution made during the fiscal year as the NPV. However, if the institution chooses to use this 50 percent calculation, the institution may not sell any of these loans until they have been in repayment for at least two years.

(c) *Sanctions.* If an institution does not derive at least 10 percent of its revenue from sources other than title IV, HEA program funds—

(1) For two consecutive fiscal years, it loses its eligibility to participate in the title IV, HEA programs for at least two fiscal years. To regain eligibility, the institution must demonstrate that it complied with the State licensure and accreditation requirements under 34 CFR 600.5(a)(4) and (a)(6), and the financial responsibility requirements under subpart L of this part, for a minimum of two fiscal years after the fiscal year it became ineligible; or

(2) For any fiscal year, it becomes provisionally certified under § 668.13(c)(1)(ii) for the two fiscal years after the fiscal year it failed to satisfy the revenue requirement. However, the institution's provisional certification terminates on—

(i) The expiration date of the institution's program participation agreement that was in effect on the date the Secretary determined the institution failed this requirement; or

(ii) The date the institution loses its eligibility to participate under paragraph (c)(1) of this section; and

(3) It must notify the Secretary no later than 45 days after the end of its fiscal year that it failed to meet this requirement.

(Approved by Office of Management and Budget under control number 1845–NEW2)

(Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a-3, 1099c, 1141)

14. Appendix C is added to subpart B of part 668 to read as follows:

BILLING CODE 4000–01–P

APPENDIX C TO SUBPART B OF PART 668 - 90/10 REVENUE CALCULATION
Section 1: Sample Student Account at the Institution / Funds Applied in Priority Order

Item		Debit	Credit	Balance
1	**Tuition and Fees**	$7,000.00		
	Funds Applied First			
2	Grant funds for the student from non-Federal public agencies or private sources independent of the institution		$ 2,200.00	$ 4,800.00
3	Funds provided for the student under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals			$...4,800.00
4	Funds used by a student from savings plans for educational expenses established by or on behalf of the student that qualify for special tax treatment under the Internal Revenue Code			$ 4,800.00
5	Institutional scholarships disbursed to the student		$ 500.00	$ 4,300.00
6	**Total Funds Applied First**		$ 2,700.00	
	Title IV Aid			
7	Subsidized Loan		$ 1,000.00	$,300.00
8	Unsubsidized Loan up to pre-ECASLA Loan Limits		$ 1,500.00	$ 1,800.00
9	Federal Pell Grant		$ 1,700.00	$ 100.00
10	FSEOG (subject to matching reduction)		$ 500.00	$ (400.00)
11	Federal Work Study Applied to Tuition and Fees (subject to matching reduction)		-	$ (400.00)
12	**Total Title IV Aid**		$ 4,700.00	
	Cash and Other Non-Title IV Aid			
13	Amount of Unsubsidized Loan Over the pre-ECASLA Loan Limits		$ 250.00	$ (650.00)
14	Student payments		-	$ (650.00)
15	Institutional loan disbursed		$ 300.00	$ (950.00)
16	**Total Cash and Other Non-Title IV Aid**		$ 550.00	
	Refund to Student	$ 950.00		-

Section 2: Revenue by Source

Item		Amount Disbursed	Adjusted Amount
	Adjusted Student Title IV Revenue		
7	Subsidized Loan	$ 1,000.00	$ 1,000.00
8	Unsubsidized Loan up to pre-ECASLA Loan Limits	$ 1,500.00	$ 1,500.00
9	Federal Pell Grant	$ 1,700.00	$ 1,700.00
10	FSEOG (subject to matching reduction, see Section 3, Adjustments to Student Title IV Revenue, item 1)	$ 500.00	$ 375.00
11	Federal Work Study Applied to Tuition and Fees (subject to matching reduction)	-	-
17	**Student Title IV Revenue**		$ 4,575.00
18	**Revenue Adjustment** (see Section 3, Adjustments to Student Title IV Revenue, item 2)		$ (275.00)
19	**Adjusted Student Title IV Revenue**		$ 4,300.00
	Student Non-Title IV Revenue		
2	Grant funds for the student from non-Federal public agencies or private sources independent of the institution	$ 2,200.00	
3	Funds provided for the student under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals	-	
4	Funds used by a student from savings plans for educational expenses established by or on behalf of the student that qualify for special tax treatment under the Internal Revenue Code	-	
5	Institutional scholarships disbursed to the student	$ 500.00	
13	Amount of Unsubsidized Loan Over the pre-ECASLA Loan Limits	-	
14	Student payments	-	
20	**Student Non-Title IV Revenue**	$ 2,700.00	
	Revenue From Other Sources (Totals for the Fiscal Year)		
21	Activities conducted by the institution that are necessary for education and training	$ 25,000.00	
22	Funds paid to the institution by, or on behalf of, students for education and training in qualified non-Title IV eligible programs	$ 43,000.00	
23	The Net Present Value (NPV) of institutional loans disbursed to students	$ 129,818.68	
24	**Revenue from Other Sources**	$ 197,818.68	

Section 3: Calculating the Revenue Percentage

$$\frac{\sum \text{Adjusted Student Title IV Revenue}}{\sum \text{Adjusted Student Title IV Revenue} + \sum \text{Student Non-Title IV Revenue} + \text{Total Revenue from Other Sources}} = \text{90/10 Revenue Percentage}$$

Adjustments to Student Title IV Revenue

1. The amount of FSEOG funds disbursed to a student (Item 10) and the amount of FWS funds credited to the student's account (Item 11) are reduced by the amount of the institutional matching funds (see Item 10 in Section 2 of the example).

2. If the amount of Funds Applied First (Item 6) + Student Title IV Revenue (Item 17) is more than Tuition and Fees (Item 1), then Student Title IV Revenue (Item 17) is reduced by the amount over Tuition and Fees (Item 1) (see Item 18 in Section 2 of the example).

3. If Title IV funds are returned for a student under 34 CFR 668.22, then Student Title IV Revenue is reduced by the amount returned.

∑ Adjusted Student Title IV Revenue = The sum of the amounts of Item 17, as adjusted, for each student at the institution during the fiscal year to whom the institution disbursed Title IV Aid

Adjustments to Student Non-Title IV Revenue

An Unsubsidized loan over the pre-ECSALA loan limit (Item 13) and any Student Payments (Item 14) count as Student Non-Title IV Revenue only for the amount needed to cover Tuition and Fees (Item 1) that are not paid by Funds Applied First (Item 6) and funds under Student Title IV Revenue (Item 19) (see Items 13 and 14 in Section 2 of the example).

∑ Student Non-Title IV Revenue = The sum of the amounts of Item 20, as adjusted, for each student at the institution during the fiscal year whose Non-Title IV funds were used to pay all or some of those student's Tuition and Fee charges

Total Revenue from Other Sources

Activities conducted by the institution that are necessary for education and training (Item 21) = Total revenue generated by the institution from these activities during the fiscal year

Funds paid to the institution by, or on behalf of, students for education and training in qualified non-Title IV eligible programs (Item 22) = Total revenue generated by the institution from these programs during the fiscal year

The Net Present Value (NPV) of institutional loans disbursed to students (Item 23)

Total Revenue from Other Sources = The sum of the amounts for Items 21, 22, and 23 for the fiscal year

Section 4: Calculating the Net present Value

$$NPV = \sum R^t / (1+i)^t$$

An institution makes a total of $125,000 in 3-year loans at 8.5% and a total of $75,000 in 4-year loans at 8.5%. The Discount rate is 3%.

	Year	Expected Cash Flow*	Actual Cash Flow (R) using 60% Collection Rate	Discounted Cash Flow
3-year Loans	1	47340.00	28404.00	$28404 / (1+.03)^1 = 27576.70$
	2	47340.00	28404.00	$28404 / (1+.03)^2 = 26773.49$
	3	47340.00	28404.00	$28404 / (1+.03)^3 = 25993.68$
			NPV or Sum of the discounted cash flows for 3-year loans = 80343.87	

	Year	Expected Cash Flow*	Actual Cash Flow (R) using 60% Collection Rate	Discounted Cash Flow
4-year Loans	1	22183.44	13310.06	$13310.06 / (1+.03)^1 = 12922.39$
	2	22183.44	13310.06	$13310.06 / (1+.03)^2 = 12546.01$
	3	22183.44	13310.06	$13310.06 / (1+.03)^3 = 12180.59$
	4	22183.44	13310.06	$13310.06/ (1+.03)^4 = 11825.82$
			NPV or Sum of the discounted cash flows for 4-year loans = 49474.81	
				Total NPV for all loans = 129818.68

* Expected cash flow represents the total amount of payments due on the loans for the fiscal year.

BILLING CODE 4000–01–C

15. Section 668.32 is amended by:

A. Revising the introductory text.

B. In paragraph (a)(1)(iii), adding the word ''and'' after the punctuation '';''.

C. In paragraph (a)(2), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

D. In paragraph (b), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

E. In paragraph (c)(4)(ii), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

F. In paragraph (d), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

G. In paragraph (e)(4)(ii), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

H. In paragraph (f), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

I. In paragraph (g)(4), removing the punctuation '';'' at the end of the paragraph and adding, in its place, the punctuation ''.''.

J. In paragraph (h), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

K. In paragraph (i), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

L. In paragraph (j), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

M. In paragraph (k)(9), removing the word ''; and'' and adding, in its place, the punctuation ''.''.

N. In paragraph (l), removing the word ''; and'' and adding, in its place, the punctuation ''.''.

O. Adding paragraph (n).

The revision and addition read as follows:

§ 668.32 Student eligibility—general.

A student is eligible to receive title IV, HEA program assistance if the student either meets all of the requirements in paragraphs (a) through (m) of this section or meets the requirement in paragraph (n) of this section as follows:

* * * * *

(n) Is enrolled in a comprehensive transition and postsecondary program under subpart O of this part and meets the student eligibility criteria in that subpart.

* * * * *

16. Section 668.41 is amended by:

A. In paragraph (a), adding, in alphabetical order, definitions of *on-campus student housing facility* and *retention rate.*

B. Revising paragraph (d).

C. Revising paragraph (e).

D. In paragraph (g)(1)(i), removing the words ''on request''.

E. In the OMB control number parenthetical at the end of the section, removing the words, ''and 1845–0010''.

The additions and revisions read as follows:

§ 668.41 Reporting and disclosure of information.

(a) * * *

On-campus student housing facility: A dormitory or other residential facility for students that is located on an

institution's campus, as defined in § 668.46(a).

* * * * *

Retention rate means a measure of the rate at which students persist in their educational program at an institution expressed as a percentage. For four-year institutions, this is the percentage of first-time bachelors (or equivalent) degree-seeking undergraduates from the previous fall who are again enrolled in the current fall. For all other institutions, this is the percentage of first-time degree- or certificate-seeking students from the previous fall who either re-enrolled or successfully completed their program by the current fall.

* * * * *

(d) *General disclosures for enrolled or prospective students.* An institution must make available to any enrolled student or prospective student through appropriate publications, mailings or electronic media, information concerning—

(1) Financial assistance available to students enrolled in the institution (pursuant to § 668.42).

(2) The institution (pursuant to § 668.43).

(3) The institution's retention rate as reported to the Integrated Postsecondary Education Data System (IPEDS). In the case of a request from a prospective student, the information must be made available prior to the student's enrolling or entering into any financial obligation with the institution.

(4) The institution's completion or graduation rate and, if applicable, its transfer-out rate (pursuant to § 668.45). In the case of a request from a prospective student, the information must be made available prior to the student's enrolling or entering into any financial obligation with the institution.

(5) The placement of, and types of employment obtained by, graduates of the institution's degree or certificate programs.

(i) The information provided in compliance with this paragraph may be gathered from—

(A) The institution's placement rate for any program, if it calculates such a rate;

(B) State data systems;

(C) Alumni or student satisfaction surveys; or

(D) Other relevant sources.

(ii) The institution must identify the source of the information provided in compliance with this paragraph, as well as any time frames and methodology associated with it.

(iii) The institution must disclose any placement rates it calculates.

(6) The types of graduate and professional education in which graduates of the institution's four-year degree programs enroll.

(i) The information provided in compliance with this paragraph may be gathered from—

(A) State data systems;

(B) Alumni or student satisfaction surveys; or

(C) Other relevant sources.

(ii) The institution must identify the source of the information provided in compliance with this paragraph, as well as any time frames and methodology associated with it.

(e) *Annual security report and annual fire safety report*—(1) *Enrolled students and current employees—annual security report and annual fire safety report.* By October 1 of each year, an institution must distribute to all enrolled students and current employees its annual security report described in § 668.46(b), and, if the institution maintains an on-campus student housing facility, its annual fire safety report described in § 668.49(b), through appropriate publications and mailings, including—

(i) Direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail;

(ii) A publication or publications provided directly to each individual; or

(iii) Posting on an Internet Web site or an Intranet Web site, subject to paragraph (e)(2) and (3) of this section.

(2) *Enrolled students—annual security report and annual fire safety report.* If an institution chooses to distribute either its annual security report or annual fire safety report to enrolled students by posting the disclosure or disclosures on an Internet Web site or an Intranet Web site, the institution must comply with the requirements of paragraph (c)(2) of this section.

(3) *Current employees—annual security report and annual fire safety report.* If an institution chooses to distribute either its annual security report or annual fire safety report to current employees by posting the disclosure or disclosures on an Internet Web site or an Intranet Web site, the institution must, by October 1 of each year, distribute to all current employees a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the institution will provide a paper copy of the report upon request.

(4) *Prospective students and prospective employees—annual security report and annual fire safety report.* For each of the reports, the institution must provide a notice to prospective students and prospective employees that includes a statement of the report's availability, a description of its contents, and an opportunity to request a copy. An institution must provide its annual security report and annual fire safety report, upon request, to a prospective student or prospective employee. If the institution chooses to provide either its annual security report or annual fire safety report to prospective students and prospective employees by posting the disclosure on an Internet Web site, the notice described in this paragraph must include the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report upon request.

(5) *Submission to the Secretary—annual security report and annual fire safety report.* Each year, by the date and in a form specified by the Secretary, an institution must submit the statistics required by §§ 668.46(c) and 668.49(c) to the Secretary.

(6) *Publication of the annual fire safety report.* An institution may publish its annual fire safety report concurrently with its annual security report only if the title of the report clearly states that the report contains both the annual security report and the annual fire safety report. If an institution chooses to publish the annual fire safety report separately from the annual security report, it must include information in each of the two reports about how to directly access the other report.

* * * * *

17. Section 668.43 is amended by:

A. In the introductory text of paragraph (a), removing the words ''upon request''.

B. In paragraph (a)(5)(ii), removing the word ''and'' that appears after the punctuation '';''.

C. In paragraph (a)(5)(iii), adding the word ''and'' after the punctuation '';''.

D. Adding paragraph (a)(5)(iv).

E. Revising paragraph (a)(7).

F. In paragraph (a)(8), removing the word ''and'' that appears after the punctuation '';''.

G. In paragraph (a)(9), removing the punctuation ''.'' And adding, in its place, the word ''; and''.

H. Adding paragraph (a)(10).

I. In paragraph (b), removing the words '', upon request,''.

The additions and revision read as follows:

§ 668.43 Institutional information.

(a) * * *

(5) * * *

(iv) Any plans by the institution for improving the academic program of the institution;

* * * * *

(7) A description of the services and facilities available to students with disabilities, including students with intellectual disabilities as defined in subpart O of this part;

* * * * *

(10) Institutional policies and sanctions related to copyright infringement, including—

(i) A statement that explicitly informs its students that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject the students to civil and criminal liabilities;

(ii) A summary of the penalties for violation of Federal copyright laws; and

(iii) A description of the institution's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in illegal downloading or unauthorized distribution of copyrighted materials using the institution's information technology system.

* * * * *

18. Section 668.45 is revised to read as follows:

§ 668.45 Information on completion or graduation rates.

(a)(1) An institution annually must prepare the completion or graduation rate of its certificate- or degree-seeking, first-time, full-time undergraduate students, as provided in paragraph (b) of this section.

(2) An institution that determines that its mission includes providing substantial preparation for students to enroll in another eligible institution must prepare the transfer-out rate of its certificate- or degree-seeking, first-time, full-time undergraduate students, as provided in paragraph (c) of this section.

(3)(i) An institution that offers a predominant number of its programs based on semesters, trimesters, or quarters must base its completion or graduation rate, retention rate, and, if applicable, transfer-out rate calculations, on the cohort of certificate- or degree-seeking, first-time, full-time undergraduate students who enter the institution during the fall term of each year.

(ii) An institution not covered by the provisions of paragraph (a)(3)(i) of this section must base its completion or graduation rate, retention rate, and, if applicable, transfer-out rate calculations, on the cohort of certificate- or degree-seeking, first-time, full-time undergraduate students who enter the institution between September 1 of one year and August 31 of the following year.

(4)(i) An institution covered by the provisions of paragraph (a)(3)(i) of this section must count as an entering student a first-time undergraduate student who is enrolled as of October 15, the end of the institution's drop-add period, or another official reporting date as defined in § 668.41(a).

(ii) An institution covered by paragraph (a)(3)(ii) of this section must count as an entering student a first-time undergraduate student who is enrolled for at least—

(A) 15 days, in a program of up to, and including, one year in length; or

(B) 30 days, in a program of greater than one year in length.

(5) An institution must make available its completion or graduation rate and, if applicable, transfer-out rate, no later than the July 1 immediately following the 12-month period ending August 31 during which 150 percent of the normal time for completion or graduation has elapsed for all of the students in the group on which the institution bases its completion or graduation rate and, if applicable, transfer-out rate calculations.

(6)(i) Completion or graduation rate information must be disaggregated by gender, by each major racial and ethnic subgroup (as defined in IPEDS), by recipients of a Federal Pell Grant, by recipients of a Federal Family Education Loan or a Federal Direct Loan (other than an Unsubsidized Stafford Loan made under the Federal Family Education Loan Program or a Federal Direct Unsubsidized Stafford Loan) who did not receive a Federal Pell Grant, and by recipients of neither a Federal Pell Grant nor a Federal Family Education Loan or a Federal Direct Loan (other than an Unsubsidized Stafford Loan made under the Federal Family Education Loan Program or a Federal Direct Unsubsidized Loan) if the number of students in such group or with such status is sufficient to yield statistically reliable information and reporting will not reveal personally identifiable information about an individual student. If such number is not sufficient for such purpose, i.e., is too small to be meaningful, then the institution shall note that the institution enrolled too few of such students to so disclose or report with confidence and confidentiality.

(ii) With respect to the requirement in paragraph (a)(6)(i) of this section to disaggregate the completion or graduation rate information by the receipt or nonreceipt of Federal student aid, students shall be considered to have received the aid in question only if they received such aid in the period specified in paragraph (a)(3) of this section.

(iii) The requirement in paragraph (a)(6)(i) of this section shall not apply to two-year, degree-granting institutions of higher education until academic year 2011–2012.

(b) In calculating the completion or graduation rate under paragraph (a)(1) of this section, an institution must count as completed or graduated—

(1) Students who have completed or graduated by the end of the 12-month period ending August 31 during which 150 percent of the normal time for completion or graduation from their program has lapsed; and

(2) Students who have completed a program described in § 668.8(b)(1)(ii), or an equivalent program, by the end of the 12-month period ending August 31 during which 150 percent of normal time for completion from that program has lapsed.

(c) In calculating the transfer-out rate under paragraph (a)(2) of this section, an institution must count as transfers-out students who by the end of the 12-month period ending August 31 during which 150 percent of the normal time for completion or graduation from the program in which they were enrolled has lapsed, have not completed or graduated but have subsequently enrolled in any program of an eligible institution for which its program provided substantial preparation.

(d) For the purpose of calculating a completion or graduation rate and a transfer-out rate, an institution may—

(1) Exclude students who—

(i) Have left school to serve in the Armed Forces;

(ii) Have left school to serve on official church missions;

(iii) Have left school to serve with a foreign aid service of the Federal Government, such as the Peace Corps;

(iv) Are totally and permanently disabled; or

(v) Are deceased.

(2) In cases where the students described in paragraphs (d)(1)(i) through (iii) of this section represent 20 percent or more of the certificate- or degree-seeking, full-time, undergraduate students at the institution, recalculate the completion or graduation rates of those students by adding to the 150 percent time-frame they normally have to complete or graduate, as described in paragraph (b) of this section, the time period the students were not enrolled due to their service in the Armed

Forces, on official church missions, or with a recognized foreign aid service of the Federal Government.

(e)(1) The Secretary grants a waiver of the requirements of this section dealing with completion and graduation rate data to any institution that is a member of an athletic association or conference that has voluntarily published completion or graduation rate data, or has agreed to publish data, that the Secretary determines are substantially comparable to the data required by this section.

(2) An institution that receives a waiver of the requirements of this section must still comply with the requirements of § 668.41(d)(3) and (f).

(3) An institution, or athletic association or conference applying on behalf of an institution, that seeks a waiver under paragraph (e)(1) of this section must submit a written application to the Secretary that explains why it believes the data the athletic association or conference publishes are accurate and substantially comparable to the information required by this section.

(f) In addition to calculating the completion or graduation rate required by paragraph (a)(1) of this section, an institution may, but is not required to—

(1) Calculate a completion or graduation rate for students who transfer into the institution;

(2) Calculate a completion or graduation rate for students described in paragraphs (d)(1)(i) through (iv) of this section; and

(3) Calculate a transfer-out rate as specified in paragraph (c) of this section, if the institution determines that its mission does not include providing substantial preparation for its students to enroll in another eligible institution.

(Approved by the Office of Management and Budget under control number 1845–0004)

(Authority: 20 U.S.C. 1092)

19. Section 668.46 is amended by:

A. In paragraph (a), adding, in alphabetical order, a definition of *test.*

B. In paragraph (b), adding paragraphs (13) and (14).

C. Revising paragraph (c)(3).

D. In paragraph (e), revising the paragraph heading and adding paragraph (e)(3).

E. Adding paragraph (g).

F. Adding paragraph (h).

The additions and revisions read as follows:

§ 668.46 Institutional security policies and crime statistics.

(a) * * *

Test: Regularly scheduled drills, exercises, and appropriate follow-through activities, designed for assessment and evaluation of emergency plans and capabilities.

* * * * *

(b) * * *

(13) Beginning with the annual security report distributed by October 1, 2010, a statement of policy regarding emergency response and evacuation procedures, as described in paragraph (g) of this section.

(14) Beginning with the annual security report distributed by October 1, 2010, a statement of policy regarding missing student notification procedures, as described in paragraph (h) of this section.

(c) * * *

(3) *Reported crimes if a hate crime.* An institution must report, by category of prejudice, the following crimes reported to local police agencies or to a campus security authority that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability:

(i) Any crime it reports pursuant to paragraph (c)(1)(i) through (vii) of this section.

(ii) The crimes of larceny-theft, simple assault, intimidation, and destruction/damage/vandalism of property.

(iii) Any other crime involving bodily injury.

* * * * *

(e) *Timely warning and emergency notification.* * * *

(3) If there is an immediate threat to the health or safety of students or employees occurring on campus, as described in paragraph (g)(1) of this section, an institution must follow its emergency notification procedures. An institution that follows its emergency notification procedures is not required to issue a timely warning based on the same circumstances; however, the institution must provide adequate follow-up information to the community as needed.

* * * * *

(g) *Emergency response and evacuation procedures.* An institution must include a statement of policy regarding its emergency response and evacuation procedures in the annual security report. This statement must include—

(1) The procedures the institution will use to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus;

(2) A description of the process the institution will use to—

(i) Confirm that there is a significant emergency or dangerous situation as described in paragraph (g)(1) of this section;

(ii) Determine the appropriate segment or segments of the campus community to receive a notification;

(iii) Determine the content of the notification; and

(iv) Initiate the notification system;

(3) A statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing a notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency;

(4) A list of the titles of the person or persons or organization or organizations responsible for carrying out the actions described in paragraph (g)(2) of this section;

(5) The institution's procedures for disseminating emergency information to the larger community; and

(6) The institution's procedures to test the emergency response and evacuation procedures on at least an annual basis, including—

(i) Tests that may be announced or unannounced;

(ii) Publicizing its emergency response and evacuation procedures in conjunction with at least one test per calendar year; and

(iii) Documenting, for each test, a description of the exercise, the date, time, and whether it was announced or unannounced.

(h) *Missing student notification policies and procedures.* (1) An institution that provides any on-campus student housing facility must include a statement of policy regarding missing student notification procedures for students who reside in on-campus student housing facilities in its annual security report. This statement must—

(i) Indicate a list of titles of the persons or organizations to which students, employees, or other individuals should report that a student has been missing for 24 hours;

(ii) Require that any missing student report must be referred immediately to the institution's police or campus security department, or, in the absence of an institutional police or campus security department, to the local law enforcement agency that has jurisdiction in the area;

(iii) Contain an option for each student living in an on-campus student housing facility to identify a contact person or persons whom the institution shall notify if the student is determined

missing by the institutional police or campus security department, or the local law enforcement agency;

(iv) Advise students that their contact information will be registered confidentially, that this information will be accessible only to authorized campus officials, and that it may not be disclosed, except to law enforcement personnel in furtherance of a missing person investigation;

(v) Advise students that if they are under 18 years of age and not emancipated, the institution must notify a custodial parent or guardian when the student is missing, in addition to any additional contact person designated by the student; and

(vi) Advise students that, regardless of whether they name a contact person, unless the local law enforcement agency was the entity that made the determination that a student is missing, the institution will notify the local law enforcement agency that the student is missing.

(2) The procedures that the institution must follow when a student who resides in an on-campus student housing facility is determined to have been missing for 24 hours include—

(i) If the student has designated a contact person, notifying that contact person within 24 hours;

(ii) If the student is under 18 years of age and is not emancipated, notifying the student's custodial parent or guardian and any other designated contact person within 24 hours; and

(iii) Regardless of whether the student has identified a contact person, is above the age of 18, or is an emancipated minor, informing the local law enforcement agency that has jurisdiction in the area that the student has been reported to be missing within 24 hours.

* * * * *

§ 668.48 [Amended]

20. Section 668.48(b) is amended by removing the parenthetical ''(d)'' and adding, in its place, the parenthetical ''(e)''.

21. Section 668.49 is added to subpart D of part 668 to read as follows:

§ 668.49 Institutional fire safety policies and fire statistics.

(a) *Additional definitions that apply to this section.*

Cause of fire: The factor or factors that give rise to a fire. The causal factor may be, but is not limited to, the result of an intentional or unintentional action, mechanical failure, or act of nature.

Fire: Any instance of open flame or other burning in a place not intended to contain the burning or in an uncontrolled manner.

Fire drill: A supervised practice of a mandatory evacuation of a building for a fire.

Fire-related injury: Any instance in which a person is injured as a result of a fire, including an injury sustained from a natural or accidental cause, while involved in fire control, attempting rescue, or escaping from the dangers of the fire. The term ''person'' may include students, faculty, staff, visitors, firefighters, or any other individuals.

Fire-related death: Any instance in which a person—

(1) Is killed as a result of a fire, including death resulting from a natural or accidental cause while involved in fire control, attempting rescue, or escaping from the dangers of a fire; or

(2) Dies within one year of injuries sustained as a result of the fire.

Fire safety system: Any mechanism or system related to the detection of a fire, the warning resulting from a fire, or the control of a fire. This may include sprinkler systems or other fire extinguishing systems, fire detection devices, stand-alone smoke alarms, devices that alert one to the presence of a fire, such as horns, bells, or strobe lights; smoke-control and reduction mechanisms; and fire doors and walls that reduce the spread of a fire.

Value of property damage: The estimated value of the loss of the structure and contents, in terms of the cost of replacement in like kind and quantity. This estimate should include contents damaged by fire, and related damages caused by smoke, water, and overhaul; however, it does not include indirect loss, such as business interruption.

(b) *Annual fire safety report.* Beginning by October 1, 2010, an institution that maintains any on-campus student housing facility must prepare an annual fire safety report that contains, at a minimum, the following information:

(1) The fire statistics described in paragraph (c) of this section.

(2) A description of each on-campus student housing facility fire safety system.

(3) The number of fire drills held during the previous calendar year.

(4) The institution's policies or rules on portable electrical appliances, smoking, and open flames in a student housing facility.

(5) The institution's procedures for student housing evacuation in the case of a fire.

(6) The policies regarding fire safety education and training programs provided to the students, faculty, and staff. In these policies, the institution must describe the procedures that students and employees should follow in the case of a fire.

(7) For purposes of including a fire in the statistics in the annual fire safety report, a list of the titles of each person or organization to which students and employees should report that a fire occurred.

(8) Plans for future improvements in fire safety, if determined necessary by the institution.

(c) *Fire statistics.* (1) An institution must report statistics for each on-campus student housing facility, for the three most recent calendar years for which data are available, concerning—

(i) The number of fires and the cause of each fire;

(ii) The number of injuries related to a fire that resulted in treatment at a medical facility, including at an on-campus health center;

(iii) The number of deaths related to a fire; and

(iv) The value of property damage caused by a fire.

(2) An institution is required to submit a copy of the fire statistics in paragraph (c)(1) of this section to the Secretary on an annual basis.

(d) *Fire log.* (1) An institution that maintains on-campus student housing facilities must maintain a written, easily understood fire log that records, by the date that the fire was reported, any fire that occurred in an on-campus student housing facility. This log must include the nature, date, time, and general location of each fire.

(2) An institution must make an entry or an addition to an entry to the log within two business days, as defined under § 668.46(a), of the receipt of the information.

(3) An institution must make the fire log for the most recent 60-day period open to public inspection during normal business hours. The institution must make any portion of the log older than 60 days available within two business days of a request for public inspection.

(4) An institution must make an annual report to the campus community on the fires recorded in the fire log. This requirement may be satisfied by the annual fire safety report described in paragraph (b) of this section.

(Approved by the Office of Management and Budget under control number 1845–NEW3)

(Authority: 20 U.S.C. 1092)

22. Appendix A to subpart D of part 668 is amended by:

A. Revising the introductory text.

B. Under the heading, ''Crime Definitions From the Uniform Crime Reporting Handbook,'' revising and

renaming the definition of *Weapon Law Violations*, as *Weapons: Carrying, Possessing, Etc.* and revising the definitions of *Drug Abuse Violations* and *Liquor Law Violations.*

C. Adding a heading at the end of the appendix, ''Definitions From the Hate Crime Data Collection Guidelines of the Uniform Crime Reporting Handbook'' followed by definitions for *larceny-theft (except motor vehicle theft), simple assault*, *intimidation*, and *destruction/damage/vandalism of property.*

The revisions and additions read as follows:

Appendix A to Subpart D of Part 668—Crime Definitions in Accordance With the Federal Bureau of Investigation's Uniform Crime Reporting Program

The following definitions are to be used for reporting the crimes listed in § 668.46, in accordance with the Federal Bureau of Investigation's Uniform Crime Reporting Program. The definitions for *murder*; *robbery*; *aggravated assault*; burglary; *motor vehicle theft; weapons: carrying, possessing, etc.*; *law violations*; *drug abuse violations*; and *liquor law violations* are excerpted from the Uniform Crime Reporting Handbook. The definitions of *forcible rape* and *nonforcible sex offenses* are excerpted from the National Incident-Based Reporting System Edition of the Uniform Crime Reporting Handbook. The definitions of *larceny-theft (except motor vehicle theft), simple assault*, *intimidation*, and *destruction/damage/vandalism of property* are excerpted from the Hate Crime Data Collection Guidelines of the Uniform Crime Reporting Handbook.

* * * * *

Crime Definitions From the Uniform Crime Reporting Handbook

* * * * *

Weapons: Carrying, Possessing, Etc.

The violation of laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, concealment, or use of firearms, cutting instruments, explosives, incendiary devices, or other deadly weapons.

Drug Abuse Violations

The violation of laws prohibiting the production, distribution, and/or use of certain controlled substances and the equipment or devices utilized in their preparation and/or use. The unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation, or importation of any controlled drug or narcotic substance. Arrests for violations of State and local laws, specifically those relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs.

Liquor Law Violations

The violation of State or local laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, or use of alcoholic beverages, not including driving under the influence and drunkenness.

* * * * *

Definitions From the Hate Crime Data Collection Guidelines of the Uniform Crime Reporting Handbook

Larceny-Theft (except motor vehicle theft)

The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. Attempted larcenies are included. Embezzlement, confidence games, forgery, worthless checks, etc., are excluded.

Simple Assault

An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.

Intimidation

To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

Destruction/Damage/Vandalism of Property

To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

23. Section 668.161 is amended by:

A. Revising the section heading.

B. Revising paragraph (a)(4).

The revisions read as follows:

§ 668.161 Scope and purpose (cash management rules).

(a) * * *

(4) An institution must follow the disbursement procedures in 34 CFR 675.16 for paying a student his or her wages under the FWS Program instead of the disbursement procedures in §§ 668.164(a), (b), and (d) through (g), and 668.165.

* * * * *

§ 668.184 [Amended]

24. Section 668.184(a)(1) is amended by removing the word ''If'' and adding, in its place, the words ''Except as provided under 34 CFR 600.32(d), if''.

25. Subpart O, consisting of §§ 668.230 through 668.233, is added to part 668 to read as follows:

Subpart O—Financial Assistance for Students With Intellectual Disabilities

Sec.

Subpart O—Financial Assistance for Students With Intellectual Disabilities

§ 668.230 Scope and purpose.

This subpart establishes regulations that apply to an institution that offers comprehensive transition and postsecondary programs to students with intellectual disabilities. Students enrolled in these programs are eligible for Federal financial assistance under the Federal Pell Grant, FSEOG, and FWS programs. Except for provisions related to needs analysis, the Secretary may waive any title IV, HEA program requirement related to the Federal Pell Grant, FSEOG, and FWS programs or institutional eligibility, to ensure that students with intellectual disabilities remain eligible for funds under these assistance programs. However, unless provided in this subpart or subsequently waived by the Secretary, students with intellectual disabilities and institutions that offer comprehensive transition and postsecondary programs are subject to the same regulations and procedures that otherwise apply to title IV, HEA program participants.

(Authority: 20 U.S.C. 1091)

§ 668.231 Definitions.

The following definitions apply to this subpart:

Comprehensive transition and postsecondary program means a degree, certificate, nondegree, or noncertificate program that—

(1) Is offered by a participating institution;

(2) Is delivered to students physically attending the institution;

(3) Is designed to support students with intellectual disabilities who are seeking to continue academic, career and technical, and independent living instruction at an institution of higher education in order to prepare for gainful employment;

(4) Includes an advising and curriculum structure;

(5) Requires students with intellectual disabilities to have at least one-half of their participation in the program, as determined by the institution, focus on academic components through one or more of the following activities:

(i) Taking credit-bearing courses with students without disabilities.

(ii) Auditing or otherwise participating in courses with students without disabilities for which the student does not receive regular academic credit.

(iii) Taking non-credit-bearing, nondegree courses with students without disabilities.

(iv) Participating in internships or work-based training in settings with individuals without disabilities; and

(6) Provides students with intellectual disabilities opportunities to participate in coursework and other activities with students without disabilities.

Student with an intellectual disability means a student—

(1) With mental retardation or a cognitive impairment characterized by significant limitations in—

(i) Intellectual and cognitive functioning; and

(ii) Adaptive behavior as expressed in conceptual, social, and practical adaptive skills; and

(2) Who is currently, or was formerly, eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401), including a student who was determined eligible for special education or related services under the IDEA but was home-schooled or attended private school.

(Authority: 20 U.S.C. 1091, 1140)

§ 668.232 Program eligibility.

An institution that offers a comprehensive transition and postsecondary program must apply to the Secretary to have the program determined to be an eligible program. The institution applies under the provisions in 34 CFR 600.20 for adding an educational program, and must include in its application—

(a) A detailed description of the comprehensive transition and postsecondary program that addresses all of the components of the program, as defined in § 668.231;

(b) The institution's policy for determining whether a student enrolled in the program is making satisfactory academic progress;

(c) The number of weeks of instructional time and the number of semester or quarter credit hours or clock hours in the program, including the equivalent credit or clock hours associated with noncredit or reduced credit courses or activities;

(d) A description of the educational credential offered (*e.g.,* degree or certificate) or identified outcome or outcomes established by the institution for all students enrolled in the program;

(e) A copy of the letter or notice sent to the institution's accrediting agency informing the agency of its comprehensive transition and postsecondary program. The letter or notice must include a description of the items in paragraphs (a) through (d) of this section; and

(f) Any other information the Secretary may require.

(Approved by the Office of Management and Budget under control number 1845–NEW4)

(Authority: 20 U.S.C. 1091)

§ 668.233 Student eligibility.

A student with an intellectual disability is eligible to receive Federal Pell, FSEOG, and FWS program assistance under this subpart if—

(a) The student satisfies the general student eligibility requirements under § 668.32, except for the requirements in paragraphs (a), (e), and (f) of that section. With regard to these exceptions, a student—

(1) Does not have to be enrolled for the purpose of obtaining a degree or certificate;

(2) Is not required to have a high school diploma, a recognized equivalent of a high school diploma, or have passed an ability to benefit test; and

(3) Is making satisfactory progress according to the institution's published standards for students enrolled in its comprehensive transition and postsecondary programs;

(b) The student is enrolled in a comprehensive transition and postsecondary program approved by the Secretary; and

(c) The institution obtains a record from a local educational agency that the student is or was eligible for special education and related services under the IDEA. If that record does not identify the student as having an intellectual disability, as described in paragraph (1) of the definition of a student with an intellectual disability in § 668.231, the institution must also obtain documentation establishing that the student has an intellectual disability, such as—

(1) A documented comprehensive and individualized psycho-educational evaluation and diagnosis of an intellectual disability by a psychologist or other qualified professional; or

(2) A record of the disability from a local or State educational agency, or government agency, such as the Social Security Administration or a vocational rehabilitation agency, that identifies the intellectual disability.

(Approved by the Office of Management and Budget under control number 1845–NEW4)

(Authority: 20 U.S.C. 1091)

PART 675—FEDERAL WORK-STUDY PROGRAMS

26. The authority citation for part 675 is revised to read as follows:

Authority: 3 20 U.S.C. 1070g, 1094; 42 U.S.C. 2751–2756b; unless otherwise noted.

§ 675.2 [Amended]

27. In § 675.2(b), paragraph (1) of the definition of *community services* is amended by adding the words ''emergency preparedness and response,'' after the words ''public safety,''.

28. Section 675.16 is revised to read as follow:

§ 675.16 Payments to students.

(a) *General.* (1) An institution must follow the disbursement procedures in this section for paying a student his or her wages under the FWS Program instead of the disbursement procedures in 34 CFR 668.164(a), (b), and (d) through (g), and 34 CFR 668.165. The institution must follow 34 CFR 668.164(c) on making direct FWS payments to students and 34 CFR 668.164(h) on handling the return of FWS funds that are not received or negotiated by a student.

(2) An institution must pay a student FWS compensation at least once a month.

(3) Before an institution makes an initial disbursement of FWS compensation to a student for an award period, the institution must notify the student of the amount of funds the student is authorized to earn, and how and when the FWS compensation will be paid.

(4) Regardless of who employs the student, the institution is responsible for ensuring that the student is paid for work performed.

(5) A student's FWS compensation is earned when the student performs the work.

(6) An institution may pay a student after the student's last day of attendance for FWS compensation earned while he or she was in attendance at the institution.

(7) A correspondence student must submit his or her first completed lesson before receiving a payment.

(8) The institution may not obtain a student's power of attorney to authorize any disbursement of funds without prior approval from the Secretary.

(9) An institution makes a disbursement of FWS program funds on the date that the institution credits a student's account at the institution or pays a student directly with—

(i) Funds received from the Secretary; or

(ii) Institutional funds used in advance of receiving FWS program funds.

(b) *Crediting a student's account at the institution.* (1) If the institution obtains the student's authorization described in paragraph (d) of this section, the institution may use the FWS

funds to credit a student's account at the institution to satisfy—

(i) Current year charges for—

(A) Tuition and fees;

(B) Board, if the student contracts with the institution for board;

(C) Room, if the student contracts with the institution for room; and

(D) Other educationally related charges incurred by the student at the institution; and

(ii) Prior award year charges with the restriction provided in paragraph (b)(2) of this section for a total of not more than $200 for—

(A) Tuition and fees, room, or board; and

(B) Other institutionally related charges incurred by the student at the institution.

(2) If the institution is using FWS funds in combination with other title IV, HEA program funds to credit a student's account at the institution to satisfy prior award year charges, a single $200 total prior award year charge limit applies to the use of all the title IV, HEA program funds for that purpose.

(c) *Credit balances.* Whenever an institution disburses FWS funds by crediting a student's account and the result is a credit balance, the institution must pay the credit balance directly to the student as soon as possible, but no later than 14 days after the credit balance occurs on the account.

(d) *Student authorizations.* (1) Except for the noncash contributions allowed under paragraphs (e)(2) and (3) of this section, if an institution obtains written authorization from a student, the institution may—

(i) Use the student's FWS compensation to pay for charges described in paragraph (b) of this section that are included in that authorization; and

(ii) Except if prohibited by the Secretary under the reimbursement or cash monitoring payment method, hold on behalf of the student any FWS compensation that would otherwise be paid directly to the student under paragraph (c) of this section.

(2) In obtaining the student's authorization to perform an activity described in paragraph (d)(1) of this section, an institution—

(i) May not require or coerce the student to provide that authorization;

(ii) Must allow the student to cancel or modify that authorization at any time; and

(iii) Must clearly explain how it will carry out that activity.

(3) A student may authorize an institution to carry out the activities described in paragraph (d)(1) of this section for the period during which the student is enrolled at the institution.

(4)(i) If a student modifies an authorization, the modification takes effect on the date the institution receives the modification notice.

(ii) If a student cancels an authorization to use his or her FWS compensation to pay for authorized charges under paragraph (b) of this section, the institution may use those funds to pay only those authorized charges incurred by the student before the institution received the notice.

(iii) If a student cancels an authorization to hold his or her FWS compensation under paragraph (d)(1)(ii) of this section, the institution must pay those funds directly to the student as soon as possible, but no later than 14 days after the institution receives that notice.

(5) If an institution holds excess FWS compensation under paragraph (d)(1)(ii) of this section, the institution must—

(i) Identify the amount of funds the institution holds for each student in a subsidiary ledger account designed for that purpose;

(ii) Maintain, at all times, cash in its bank account in an amount at least equal to the amount of FWS compensation the institution holds for the student; and

(iii) Notwithstanding any authorization obtained by the institution under this paragraph, pay any remaining balances by the end of the institution's final FWS payroll period for an award year.

(e)(1) *Timing of institutional share and noncash contributions.* Except for the noncash contributions allowed under paragraph (e)(2) or (3) of this section, an institution must pay the student its share of his or her FWS compensation at the same time it pays the Federal share.

(2) If an institution pays a student its FWS share for an award period in the form of tuition, fees, services, or equipment, it must pay that share before the student's final payroll period.

(3) If an institution pays its FWS share in the form of prepaid tuition, fees, services, or equipment for a forthcoming academic period, it must give the student a statement before the close of his or her final payroll period listing the amount of tuition, fees, services, or equipment earned.

(Authority: 20 U.S.C. 1091, 1094; 42 U.S.C. 2753)

29. Section 675.18 is amended by:

A. Adding paragraph (g)(4).

B. Adding paragraph (i).

C. Revise the authority citation at the end of the section.

The additions and revisions read as follows:

§ 675.18 Use of funds.

* * * * *

(g) * * *

(4)(i) In meeting the seven percent community service expenditure requirement in paragraph (g)(1) of this section, students may be employed to perform civic education and participation activities in projects that—

(A) Teach civics in schools;

(B) Raise awareness of government functions or resources; or

(C) Increase civic participation.

(ii) To the extent practicable, in providing civic education and participation activities under paragraph (g)(4)(i) of this section, an institution must—

(A) Give priority to the employment of students in projects that educate or train the public about evacuation, emergency response, and injury prevention strategies relating to natural disasters, acts of terrorism, and other emergency situations; and

(B) Ensure that the students receive appropriate training to carry out the educational services required.

* * * * *

(i) *Flexibility in the event of a major disaster.* (1) An institution located in any area affected by a major disaster may make FWS payments to disaster-affected students for the period of time (not to exceed the award period) in which the students were prevented from fulfilling their FWS obligations. The FWS payments—

(i) May be made to disaster-affected students for an amount equal to or less than the amount of FWS wages the students would have been paid had the students been able to complete the work obligation necessary to receive the funds;

(ii) May not be made to any student who was not eligible for FWS or was not completing the work obligation necessary to receive the funds, or had already separated from their employment prior to the occurrence of the major disaster; and

(iii) Must meet the matching requirements of § 675.26, unless those requirements are waived by the Secretary.

(2) The following definitions apply to this section:

(i) *Disaster-affected student* means a student enrolled at an institution who—

(A) Received an FWS award for the award period during which a major disaster occurred;

(B) Earned FWS wages from an institution for that award period;

(C) Was prevented from fulfilling his or her FWS obligation for all or part of the FWS award period because of the major disaster; and

(D) Was unable to be reassigned to another FWS job.

(ii) *Major disaster* is defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)).

(Authority: 20 U.S.C. 1095, 1096; 42 U.S.C. 2753, 2755, 2756(b))

30. Section 675.26 is amended by:

A. In paragraph (d)(2)(iii), removing the word ''or'' that appears after the punctuation '';''.

B. In paragraph (d)(2)(iv), removing the punctuation ''.'' and adding, in its place, the word ''; or''.

C. Adding paragraph (d)(2)(v).

The addition reads as follows:

§ 675.26 FWS Federal share limitations.

* * * * *

(d) * * *

(2) * * *

(v) The student is employed in community service activities and is performing civic education and participation activities in a project as defined in § 675.18(g)(4).

* * * * *

31. Section 675.41 is amended by:

A. Revising paragraph (a).

B. Revising the paragraph heading and introductory text in paragraph (b).

C. In paragraph (b)(2), removing the word '', participation,''.

D. In paragraph (b)(5), removing the words ''work-learning'' and adding, in their place, the words ''work-learning-service''.

E. In paragraph (b)(6), removing the words ''work-learning'' and adding, in their place, the words ''work-learning-service''.

The revisions read as follows:

§ 675.41 Special definitions.

* * * * *

(a) *Work-college:* An eligible institution that—

(1) Is a public or private nonprofit, four-year, degree-granting institution with a commitment to community service;

(2) Has operated a comprehensive work-learning-service program for at least two years;

(3) Requires resident students, including at least one-half of all students who are enrolled on a full-time basis, to participate in a comprehensive work-learning-service program for at least five hours each week, or at least 80 hours during each period of enrollment, except summer school, unless the student is engaged in an institutionally organized or approved study abroad or externship program; and

(4) Provides students participating in the comprehensive work-learning-service program with the opportunity to contribute to their education and to the welfare of the community as a whole.

(b) *Comprehensive student work-learning-service program:* A student work-learning-service program that—

* * * * *

§ 675.43 [Amended]

32. Section 675.43 is amended by removing the words ''work-learning'' and adding, in their place, the words ''work-learning-service''.

§ 675.44 [Amended]

33. Section 675.44(b) is amended by removing the words ''work-learning'' and adding, in their place, the words ''work-learning-service''.

§ 675.45 [Amended]

34. Section 675.45 is amended by:

A. In paragraph (a)(1), in the introductory text of paragraph (a)(4), and in paragraph (a)(4)(i) removing the words ''work-learning'' and adding, in their place, the words ''work-learning-service''.

B. In paragraph (a)(5), removing the words ''work service learning'' and adding, in their place, the words ''work-learning-service''.

PART 686—TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION (TEACH) GRANT PROGRAM

35. The authority citation for part 686 continues to read as follows:

Authority: 20 U.S.C. 1070g, *et seq.,* unless otherwise noted.

§ 686.12 [Amended]

36. Section 686.12(c)(1) is amended by adding the words '', a suspension approved under § 686.41(a)(2), or a military discharge granted under § 686.42(c)(2)'' after the words ''teaching service''.

37. Section 686.41 is amended by:

A. In the introductory text of paragraph (a)(2), removing the words ''and (ii)'' and adding, in their place, the words '', (ii), and (iii)''.

B. Revising paragraphs (a)(2)(ii), (b), and (c).

C. Adding an OMB control number at the end of the section.

The revisions and addition read as follows:

§ 686.41 Periods of suspension.

(a) * * *

(2) * * *

(ii) Does not exceed a total of three years under paragraph (a)(1)(iii) of this section.

(b) A grant recipient, or his or her representative in the case of a grant recipient who qualifies under paragraph (a)(1)(iii) of this section, must apply for a suspension in writing on a form approved by the Secretary prior to being subject to any of the conditions under § 686.43(a)(1) through (a)(5) that would cause the TEACH Grant to convert to a Federal Direct Unsubsidized Loan.

(c) A grant recipient, or his or her representative in the case of a grant recipient who qualifies under paragraph (a)(1)(iii) of this section, must provide the Secretary with documentation supporting the suspension request as well as current contact information including home address and telephone number.

(Approved by the Office of Management and Budget under control number 1845–0083)

* * * * *

38. Section 686.42 is amended by:

A. Adding paragraph (c).

B. Adding an OMB control number at the end of the section.

The additions read as follows:

§ 686.42 Discharge of agreement to serve.

* * * * *

(c) *Military discharge.* (1) A grant recipient who has completed or who has otherwise ceased enrollment in a TEACH Grant-eligible program for which he or she received TEACH Grant funds and has exceeded the period of time allowed under § 686.41(a)(2)(ii), may qualify for a proportional discharge of his or her service obligation due to an extended call or order to active duty status. To apply for a military discharge, a grant recipient or his or her representative must submit a written request to the Secretary.

(2) A grant recipient described in paragraph (c)(1) of this section may receive a—

(i) One-year discharge of his or her service obligation if a call or order to active duty status is for more than three years;

(ii) Two-year discharge of his or her service obligation if a call or order to active duty status is for more than four years;

(iii) Three-year discharge of his or her service obligation if a call or order to active duty status is for more than five years; or

(iv) Full discharge of his or her service obligation if a call or order to active duty status is for more than six years.

(3) A grant recipient or his or her representative must provide the Secretary with—

(i) A written statement from the grant recipient's commanding or personnel officer certifying—

(A) That the grant recipient is on active duty in the Armed Forces of the United States;

(B) The date on which the grant recipient's service began; and

(C) The date on which the grant recipient's service is expected to end; or

(ii)(A) A copy of the grant recipient's official military orders; and

(B) A copy of the grant recipient's military identification.

(4) For the purpose of this section, the Armed Forces means the Army, Navy, Air Force, Marine Corps, and the Coast Guard.

(5) Based on a request for a military discharge from the grant recipient or his or her representative, the Secretary will notify the grant recipient or his or her representative of the outcome of the discharge request. For the portion on the service obligation that remains, the grant recipient remains responsible for fulfilling his or her service obligation in accordance with § 686.12.

(Approved by the Office of Management and Budget under control number 1845–0083)

* * * * *

PART 690—FEDERAL PELL GRANT PROGRAM

39. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, 1070g, unless otherwise noted.

40. Section 690.63 is amended by:

A. Adding paragraph (h).

B. Adding an OMB control number and authority citation at the end of the section.

The additions read as follows:

§ 690.63 Calculation of a Federal Pell Grant for a payment period.

* * * * *

(h) *Payment from two Scheduled Awards.* (1) In a payment period, a student may receive a payment from the student's first Scheduled Award in the award year and the student's second Scheduled Award in the award year if—

(i) The student is an eligible student who meets the provisions of § 690.67; and

(ii) The student's payment for the payment period is greater than the remaining balance of the first Scheduled Award.

(2) The student's payment for the payment period—

(i) Is calculated based on the total credit or clock hours and weeks of instructional time in the payment period; and

(ii) Is the remaining amount of the first Scheduled Award plus an amount from the second Scheduled Award for the balance of the payment for the payment period.

(Approved by the Office of Management and Budget under control number 1845–NEW5)

(Authority: 20 U.S.C. 1070a)

41. Section 690.64 is revised to read as follows:

§ 690.64 Calculation of a Federal Pell Grant for a payment period which occurs in two award years.

If a student enrolls in a payment period that is scheduled to occur in two award years—

(a) The entire payment period must be considered to occur within one award year;

(b)(1) Except as provided in paragraph (b)(2) of this section—

(i) For a full-time or a three-quarter-time student—

(A) An institution must assign the payment period to the award year in which the student receives the greater payment for the payment period based on the information available at the time that the student's Federal Pell Grant is initially calculated; and

(B) If, subsequent to the initial calculation of the student's payment for the payment period, the institution receives information that the student would receive a greater payment for the payment period by reassigning the payment to the other award year, the institution must reassign the payment to the award year providing the greater payment; and

(ii) For a half-time or less-than-half-time student, an institution may assign the payment period to either award year if the student is enrolled for the payment period as a half-time or less-than-half-time student; and

(2) Upon request of a student, an institution must assign the payment period to the award year in which the student can be expected to receive a greater amount of Federal Pell Grants over the two award years in which the payment period is scheduled to occur;

(c) Except as provided in paragraph (b)(1)(i) of this section, the institution shall place a payment period with more than six months scheduled to occur within one award year in that award year;

(d) If an institution places the payment period in the first award year, it shall pay a student with funds from the first award year; and

(e) If an institution places the payment period in the second award year, it shall pay a student with funds from the second award year.

(Approved by the Office of Management and Budget under control number 1845–NEW5)

(Authority: 20 U.S.C. 1070a)

42. Section 690.67 is revised to read as follows:

§ 690.67 Receiving up to two Scheduled Awards during a single award year.

(a) *Eligibility.* An institution shall award up to the full amount of a second Scheduled Award to a student in an award year if the student—

(1) Has successfully completed the credit or clock hours of the first academic year in the award year;

(2) Is enrolled in an eligible program leading to a bachelor's or associate degree or other recognized educational credential except as provided in 34 CFR part 668, subpart O for students with intellectual disabilities; and

(3) Is enrolled at least as a half-time student.

(b) *Transfer student.* If a student transfers to an institution during an award year, the institution must—

(1) Assume that a student has completed the credit or clock hours in the first academic year of the award year if the first Scheduled Award was disbursed at other institutions during the award year; or

(2) If less than the first Scheduled Award has been disbursed at a prior institution that the student attended during the award year, the institution must determine the credit or clock hours the student is considered to have previously earned in the award year by—

(i) Multiplying the amount of the student's Scheduled Award disbursed at a prior institution during the award year by the number of credit or clock hours in the institution's academic year and dividing the product of the multiplication by the amount of the Scheduled Award at the prior institution; and

(ii) If the student previously attended more than one institution in the award year, adding the results of paragraph (b)(2)(i) of this section for each prior institution.

(c) *Special circumstances.* (1) The financial aid administrator at a student's institution may waive the requirement in paragraph (a)(1) of this section, if the financial aid administrator—

(i) Determines that, in the period during which the first Scheduled Award was disbursed, the student was unable to complete the clock or credit hours in the student's first academic year in the award year due to circumstances beyond the student's control; and

(ii) The determination is made and documented on an individual basis.

(2) For purposes of paragraph (c)(1) of this section, circumstances beyond a student's control—

(i) May include, but are not limited to, the student withdrawing from classes due to illness or being unable to register for classes necessary to complete his or

her eligible program because those classes were not offered during that period; and

(ii) Do not include, for example, withdrawing to avoid a particular grade or failing to register for a necessary class that was offered during the period to avoid a particular instructor.

(d) *Nonapplicable credit or clock hours.* To determine the student's eligibility for a second Scheduled Award in an award year, an institution may not use credit or clock hours that the student received based on Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or similar competency measures.

(Approved by the Office of Management and Budget under control number 1845–NEW5)

(Authority: 20 U.S.C. 1070a)

43. Section 690.75 is amended by:

A. Adding paragraph (e).

B. Revising the OMB control number at the end of the section.

The additions read as follows:

§ 690.75 Determination of eligibility for payment.

* * * * *

(e) A student is considered to have an expected family contribution of zero if—

(1) The student's parent or guardian was a member of the Armed Forces of the United States and the parent or guardian died as a result of performing military service in Iraq or Afghanistan after September 11, 2001; and

(2) At the time of the parent or guardian's death the student—

(i) Was under the age of 24; or

(ii) Was enrolled at an institution of higher education.

(Approved by the Office of Management and Budget under control number 1845–NEW6)

* * * * *

PART 692—LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

44. The authority citation for part 692 is revised to read as follows:

Authority: 20 U.S.C. 1070c–1070c–4, unless otherwise noted.

§ 692.10 [Amended]

45. Section 692.10 is amended by:

A. In paragraph (a)(1), adding the words ''for the programs under this part'' after the number ''1979''.

B. In paragraph (a)(2), removing the word ''If'' and adding, in its place, the words ''For the programs under this part, if''.

C. In paragraph (a)(2), removing the word ''LEAP'' each time it appears.

D. In paragraph (b), removing the word ''-appropriated'' after the word State, both times it appears.

E. In the authority citation at the end of the section, adding '', 1070c–2'' after the number ''1070c''

46. Section 692.21 is amended by:

A. In paragraph (c), removing the figure ''$5,000'' and adding, in its place, the words ''the lesser of $12,500 or the student's cost of attendance under section 472 of the HEA''.

B. In paragraph (j), removing the word ''and'' that appears after the punctuation '';''.

C. Redesignating paragraph (k) as paragraph (l).

D. Adding a new paragraph (k).

E. Adding an OMB control number at the end of the section.

The additions read as follows:

§ 692.21 What requirements must be met by a State program?

* * * * *

(k) Notifies eligible students that the grants are—

(1) Leveraging Educational Assistance Partnership Grants; and

(2) Funded by the Federal Government, the State, and, where applicable, other contributing partners; and

* * * * *

(Approved by the Office of Management and Budget under control number 1845–NEW7)

* * * * *

47. Section 692.70 is revised to read as follows:

§ 692.70 How does the Secretary allot funds to the States?

For fiscal year 2010–2011, the Secretary allots to each eligible State that applies for SLEAP funds an amount in accordance with the provisions in § 692.10 prior to calculating allotments for States applying for GAP funds under subpart C of this part.

(Authority: 20 U.S.C. 1070c–3a)

48. Subpart C, consisting of §§ 692.90 through 692.130, is added to part 692 to read as follows:

Subpart C—Grants for Access and Persistence Program

General

Sec.

Subpart C—Grants for Access and Persistence Program

General

§ 692.90 What is the Grants for Access and Persistence Program?

The Grants for Access and Persistence (GAP) Program assists States in establishing partnerships to provide eligible students with LEAP Grants under GAP to attend institutions of higher education and to encourage increased participation in early information and intervention, mentoring, or outreach programs.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.91 What other regulations apply to the GAP Program?

The regulations listed in § 692.3 also apply to the GAP Program.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.92 What definitions apply to the GAP Program?

The definitions listed in § 692.4 also apply to the GAP Program.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.93 Who is eligible to participate in the GAP Program?

(a) *States.* States that meet the requirements in §§ 692.94 and 692.100 are eligible to receive payments under the GAP Program.

(b) *Degree-granting institutions of higher education.* Degree-granting

institutions of higher education that meet the requirements in § 692.101 are eligible to participate in a partnership under the GAP Program.

(c) *Early information and intervention, mentoring, or outreach programs.* Early information and intervention, mentoring, or outreach programs that meet the requirements in § 692.101 are eligible to participate in a partnership under the GAP Program.

(d) *Philanthropic organizations or private corporations.* Philanthropic organizations or private corporations that meet the requirements in § 692.101 are eligible to participate in a partnership under the GAP Program.

(e) *Students.* Students who meet the requirements of § 692.120 are eligible to receive assistance or services from a partnership under the GAP Program.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.94 What requirements must a State satisfy, as the administrator of a partnership, to receive GAP Program funds?

To receive GAP Program funds for any fiscal year—

(a) A State must—

(1) Participate in the LEAP Program;

(2) Establish a State partnership with—

(i) At least—

(A) One public degree-granting institution of higher education that is located in the State; and

(B) One private degree-granting institution of higher education, if at least one exists in the State that may be eligible to participate in the State's LEAP Program under subpart A of this part;

(ii) New or existing early information and intervention, mentoring, or outreach programs located in the State; and

(iii) At least one philanthropic organization located in, or that provides funding in, the State, or private corporation located in, or that does business in, the State;

(3) Meet the requirements in § 692.100; and

(4) Have a program under this subpart that satisfies the requirements in § 692.21(a), (e), (f), (g), and (j).

(b) A State may provide an early information and intervention, mentoring, or outreach program under paragraph (a)(2)(ii) of this section.

(Authority: 20 U.S.C. 1070c–3a)

How Does a State Apply To Participate in GAP?

§ 692.100 What requirements must a State meet to receive an allotment under this program?

For a State to receive an allotment under the GAP Program, the State agency that administers the State's LEAP Program under subpart A of this part must—

(a) Submit an application on behalf of a partnership in accordance with the provisions in § 692.20 at such time, in such manner, and containing such information as the Secretary may require including—

(1) A description of—

(i) The State's plan for using the Federal funds allotted under this subpart and the non-Federal matching funds; and

(ii) The methods by which matching funds will be paid;

(2) An assurance that the State will provide matching funds in accordance with § 692.113;

(3) An assurance that the State will use Federal GAP funds to supplement, and not supplant, Federal and State funds available for carrying out the activities under Title IV of the HEA;

(4) An assurance that early information and intervention, mentoring, or outreach programs exist within the State or that there is a plan to make these programs widely available;

(5) A description of the organizational structure that the State has in place to administer the program, including a description of how the State will compile information on degree completion of students receiving grants under this subpart;

(6) A description of the steps the State will take to ensure, to the extent practicable, that students who receive a LEAP Grant under GAP persist to degree completion;

(7) An assurance that the State has a method in place, such as acceptance of the automatic zero expected family contribution under section 479(c) of the HEA, to identify eligible students and award LEAP Grants under GAP to such students;

(8) An assurance that the State will provide notification to eligible students that grants under this subpart are LEAP Grants and are funded by the Federal Government and the State, and, where applicable, other contributing partners.

(b) Serve as the primary administrative unit for the partnership;

(c) Provide or coordinate non-Federal share funds, and coordinate activities among partners;

(d) Encourage each institution of higher education in the State that participates in the State's LEAP Program under subpart A of this part to participate in the partnership;

(e) Make determinations and early notifications of assistance;

(f) Ensure that the non-Federal funds used as matching funds represent dollars that are in excess of the total dollars that a State spent for need-based grants, scholarships, and work-study assistance for fiscal year 1999, including the State funds reported for the programs under this part;

(g) Provide an assurance that, for the fiscal year prior to the fiscal year for which the State is requesting Federal funds, the amount the State expended from non-Federal sources per student, or the aggregate amount the State expended, for all the authorized activities in § 692.111 will be no less than the amount the State expended from non-Federal sources per student, or in the aggregate, for those activities for the second fiscal year prior to the fiscal year for which the State is requesting Federal funds; and

(h) Provide for reports to the Secretary that are necessary to carry out the Secretary's functions under the GAP Program.

(Approved by the Office of Management and Budget under control number 1845–NEW7)

(Authority: 20 U.S.C. 1070c–3a)

§ 692.101 What requirements must be met by a State partnership?

(a) *State.* A State that is receiving an allotment under this subpart must meet the requirements under §§ 692.94 and 692.100.

(b) *Degree-granting institution of higher education.* A degree-granting institution of higher education that is in a partnership under this subpart—

(1) Must participate in the State's LEAP Program under subpart A of this part;

(2) Must recruit and admit participating eligible students and provide additional institutional grant aid to participating students as agreed to with the State agency;

(3) Must provide support services to students who receive LEAP Grants under GAP and are enrolled at the institution;

(4) Must assist the State in the identification of eligible students and the dissemination of early notifications of assistance as agreed to with the State agency; and

(5) May provide funding or services for early information and intervention, mentoring, or outreach programs.

(c) *Early information and intervention, mentoring, or outreach program.* An early information and

intervention, mentoring, or outreach program that is in a partnership under this subpart shall provide direct services, support, and information to participating students.

(d) *Philanthropic organization or private corporation.* A philanthropic organization or private corporation in a partnership under this subpart shall provide non-Federal funds for LEAP Grants under GAP for participating students or provide funds or support for early information and intervention, mentoring, or outreach programs.

(Approved by the Office of Management and Budget under control number 1845–NEW7)

(Authority: 20 U.S.C. 1070c–3a)

What Is the Amount of Assistance and How May It Be Used?

§ 692.110 How does the Secretary allot funds to the States?

(a)(1) The Secretary allots to each State participating in the GAP Program an amount of the funds available for the GAP Program based on the ratio used to allot the State's Federal LEAP funds under § 692.10(a).

(2) If a State meets the requirements of § 692.113(b) for a fiscal year, the number of students under § 692.10(a) for the State is increased to 125 percent in determining the ratio in paragraph (a) of this section for that fiscal year.

(3) Notwithstanding paragraph (a)(1) and (2) of this section—

(i) If the Federal GAP funds available from the appropriation for a fiscal year are sufficient to allot to each State that participated in the prior year the same amount of Federal GAP funds allotted in the prior fiscal year, but are not sufficient both to allot the same amount of Federal GAP funds allotted in the prior fiscal year to these States and also to allot additional funds to additional States in accordance with the ratio used to allot the States' Federal LEAP funds under § 692.10(a), the Secretary allots—

(A) To each State that participated in the prior year, the amount the State received in the prior year; and

(B) To each State that did not participate in the prior year, an amount of Federal GAP funds available to States based on the ratio used to allot the State's Federal LEAP funds under § 692.10(a); and

(ii) If the Federal GAP funds available from the appropriation for a fiscal year are not sufficient to allot to each State that participated in the prior year at least the amount of Federal GAP funds allotted in the prior fiscal year, the Secretary allots to each State an amount which bears the same ratio to the amount of Federal GAP funds available as the amount of Federal GAP funds allotted to each State in the prior fiscal year bears to the amount of Federal GAP funds allotted to all States in the prior fiscal year.

(b) The Secretary allots funds available for reallotment in a fiscal year in accordance with the provisions of paragraph (a) of this section used to calculate initial allotments for the fiscal year.

(c) Any funds made available for the program under this subpart but not expended may be allotted or reallotted for the program under subpart A of this part.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.111 For what purposes may a State use its payment under the GAP Program?

(a) *Establishment of a partnership.* Each State receiving an allotment under this subpart shall use the funds to establish a partnership to award grants to eligible students in order to increase the amount of financial assistance students receive under this subpart for undergraduate education expenses.

(b) *Amount of LEAP Grants under GAP.* (1) The amount of a LEAP Grant under GAP by a State to an eligible student shall be not less than—

(i) The average undergraduate in-State tuition and mandatory fees for full-time students at the public institutions of higher education in the State where the student resides that are the same type of institution that the student attends (four-year degree-granting, two-year degree-granting, or non-degree-granting); minus

(ii) Other Federal and State aid the student receives.

(2) The Secretary determines the average undergraduate in-State tuition and mandatory fees for full-time students at public institutions in a State weighted by enrollment using the most recent data reported by institutions in the State to the Integrated Postsecondary Education Data System (IPEDS) administered by the National Center for Educational Statistics.

(c) *Institutional participation.* (1) A State receiving an allotment under this subpart may restrict the use of LEAP Grants under GAP only to students attending institutions of higher education that are participating in the partnership.

(2) If a State provides LEAP Grants under subpart A of this part to students attending institutions of higher education located in another State, LEAP Grants under GAP may be used at institutions of higher education located in another State.

(d) *Early notification to potentially eligible students.* (1) Each State receiving an allotment under this subpart shall annually notify potentially eligible students in grades 7 through 12 in the State, and their families, of their potential eligibility for student financial assistance, including a LEAP Grant under GAP, to attend a LEAP-participating institution of higher education.

(2) The notice shall include—

(i) Information about early information and intervention, mentoring, or outreach programs available to the student;

(ii) Information that a student's eligibility for a LEAP Grant under GAP is enhanced through participation in an early information and intervention, mentoring, or outreach program;

(iii) An explanation that student and family eligibility for, and participation in, other Federal means-tested programs may indicate eligibility for a LEAP Grant under GAP and other student aid programs;

(iv) A nonbinding estimate of the total amount of financial aid that an eligible student with a similar income level may expect to receive, including an estimate of the amount of a LEAP Grant under GAP and an estimate of the amount of grants, loans, and all other available types of aid from the major Federal and State financial aid programs;

(v) An explanation that in order to be eligible for a LEAP Grant under GAP, at a minimum, a student shall—

(A) Meet the eligibility requirements under § 692.120; and

(B) Enroll at a LEAP-participating institution of higher education in the State of the student's residence or an out-of-State institution if the State elects to make LEAP Grants under GAP for attendance at out-of-State institutions in accordance with paragraph (c)(2) of this section;

(vi) Any additional requirements that the State may require for receipt of a LEAP Grant under GAP in accordance with § 692.120(a)(4); and

(vii) An explanation that a student is required to file a Free Application for Federal Student Aid to determine his or her eligibility for Federal and State financial assistance and may include a provision that eligibility for an award is subject to change based on—

(A) A determination of the student's financial eligibility at the time of the student's enrollment at a LEAP-participating institution of higher education or an out-of-State institution in accordance with paragraph (c)(2) of this section;

(B) Annual Federal and State spending for higher education; and

(C) Other aid received by the student at the time of the student's enrollment at the institution of higher education.

(e) *Award notification.* (1) Once a student, including a student who has received early notification under paragraph (d) of this section, applies for admission to an institution that is a partner in the partnership of the State of the student's residence, files a Free Application for Federal Student Aid and any related State form, and is determined eligible by the State, the State shall—

(i) Issue the student a preliminary award certificate for a LEAP Grant under GAP with estimated award amounts; and

(ii) Inform the student that the payment of the grant is subject to certification of enrollment and eligibility by the institution.

(2) If a student enrolls in an institution that is not a partner in the partnership of the student's State of residence but the State has not restricted eligibility to students enrolling in partner institutions, including, if applicable, out-of-State institutions, the State shall, to the extent practicable, follow the procedures of paragraph (e)(1) of this section.

(Approved by the Office of Management and Budget under control number 1845–NEW7)

(Authority: 20 U.S.C. 1070c–3a)

§ 692.112 May a State use the funds it receives from the GAP Program to pay administrative costs?

(a) A State that receives an allotment under this subpart may reserve not more than two percent of the funds made available annually for State administrative functions required for administering the partnership and other program activities.

(b) A State must use not less than ninety-eight (98) percent of an allotment under this subpart to make LEAP Grants under GAP.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.113 What are the matching requirements for the GAP Program?

(a) The matching funds of a partnership—

(1) Shall be funds used for making LEAP Grants to eligible students under this subpart;

(2) May be—

(i) Cash; or

(ii) A noncash, in-kind contribution that—

(A) Is fairly evaluated;

(B) Has monetary value, such as a tuition waiver or provision of room and board, or transportation;

(C) Helps a student meet the cost of attendance at an institution of higher education; and

(D) Is considered to be estimated financial assistance under 34 CFR part 673.5(c); and

(3) May be funds from the State, institutions of higher education, or philanthropic organizations or private corporations that are used to make LEAP Grants under GAP.

(b) The non-Federal match of the Federal allotment shall be—

(1) Forty-three percent of the expenditures under this subpart if a State applies for a GAP allotment in partnership with—

(i) Any number of degree-granting institutions of higher education in the State whose combined full-time enrollment represents less than a majority of all students attending institutions of higher education in the State as determined by the Secretary using the most recently available data from IPEDS; and

(ii) One or both of the following—

(A) Philanthropic organizations that are located in, or that provide funding in, the State; or

(B) Private corporations that are located in, or that do business in, the State; and

(2) Thirty-three and thirty-four one-hundredths percent of the expenditures under this subpart if a State applies for a GAP allotment in partnership with—

(i) Any number of degree-granting institutions of higher education in the State whose combined full-time enrollment represents a majority of all students attending institutions of higher education in the State as determined by the Secretary using the most recently available data from IPEDS; and

(ii) One or both of the following—

(A) Philanthropic organizations that are located in, or that provide funding in, the State; or

(B) Private corporations that are located in, or that do business in, the State.

(c) Nothing in this part shall be interpreted as limiting a State or other member of a partnership from expending funds to support the activities of a partnership under this subpart that are in addition to the funds matching the Federal allotment.

(Authority: 20 U.S.C. 1070c–3a)

How Does the Partnership Select Students under the GAP Program?

§ 692.120 What are the requirements for student eligibility?

(a) *Eligibility.* A student is eligible to receive a LEAP Grant under GAP if the student—

(1) Meets the relevant eligibility requirements contained in 34 CFR 668.32;

(2) Has graduated from secondary school or, for a home-schooled student, has completed a secondary education;

(3)(i) Has received, or is receiving, a LEAP Grant under GAP for each year the student remains eligible for assistance under this subpart; or

(ii) Meets at least two of the following criteria—

(A) As designated by the State, either has an EFC equal to zero, as determined under part F of the HEA, or a comparable alternative based on the State's approved criteria for the LEAP Program under subpart A of this part;

(B) Qualifies for the State's maximum undergraduate award for LEAP Grants under subpart A of this part in the award year in which the student is receiving an additional LEAP Grant under GAP; or

(C) Is participating in, or has participated in, a Federal, State, institutional, or community early information and intervention, mentoring, or outreach program, as determined by the State agency administering the programs under this part; and

(4) Any additional requirements that the State may require for receipt of a LEAP Grant under GAP.

(b) *Priority.* In awarding LEAP Grants under GAP, a State shall give priority to students meeting all the criteria in paragraph (a)(3)(i) of this section.

(c) *Duration of eligibility.* (1) A student may receive a LEAP Grant under GAP if the student continues to demonstrate that he or she is financially eligible by meeting the provisions of paragraph (a)(3)(ii)(A) or (B) of this section.

(2) A State may impose reasonable time limits to degree completion.

(Authority: 20 U.S.C. 1070c–3a)

How Does the Secretary Approve a Waiver of Program Requirements?

§ 692.130 How does a participating institution request a waiver of program requirements?

(a) The Secretary may grant, upon the request of an institution participating in a partnership that meets the requirements of § 692.113(b)(2), a waiver for the institution from statutory or regulatory requirements that inhibit the ability of the institution to successfully and efficiently participate in the activities of the partnership.

(b) An institution must submit a request for a waiver through the State agency administering the partnership.

(c) The State agency must forward to the Secretary, in a timely manner, the request made by the institution and may include any additional information or

recommendations that it deems appropriate for the Secretary's consideration.

(Authority: 20 U.S.C. 1070c–3a)

BILLING CODE 4000–01–P

Appendix A to subpart C of part 692 – Grants for Access and Persistence Program (GAP)

State Grant Allotment Case Study

Basic Allotment Formula for LEAP, SLEAP, and GAP

1979 State Enrollment Data

State	Enrollment
Alabama	174,170
Alaska	18,594
Arizona	199,274
Arkansas	74,057
California	1,798,400
Colorado	159,836
Connecticut	152,431
Delaware	31,228
District of Columbia	85,259
Florida	366,344
Georgia	203,269
Hawaii	48,097
Idaho	39,198
Illinois	632,654
Indiana	234,086
Iowa	125,845
Kansas	129,705
Kentucky	142,958
Louisiana	166,660
Maine	41,954
Maryland	213,490
Massachusetts	376,361
Michigan	483,833
Minnesota	226,365
Mississippi	99,078
Missouri	231,327
Montana	32,270
Nebraska	83,922
Nevada	31,926
New Hampshire	40,803
New Jersey	306,983
New Mexico	59,420
New York	989,409
North Carolina	254,199
North Dakota	31,357
Ohio	464,069
Oklahoma	157,622
Oregon	150,353
Pennsylvania	514,421
Rhode Island	61,773
South Carolina	126,628
South Dakota	33,227
Tennessee	189,530
Texas	638,504
Utah	86,966
Vermont	29,398
Virginia	249,297
Washington	265,593
West Virginia	85,012
Wisconsin	244,111
Wyoming	19,633
American Samoa	836
Guam	3,710
Northern Marianas Island	143
Puerto Rico	104,640
Virgin Islands	2,122
Total	**11,712,350**

Basic Allotment Formula

1) Derive a percentage of total enrollment of all states:

$$\frac{\text{State Enrollment Data*}}{\text{Total State Enrollment (for all states/territories)}} = \text{\% of Total Enrollment}$$

2) Determine what portion of the Federal Appropriation a State/territory receives:

$$\text{\% of Total Enrollment} \times \text{Federal Appropriation Amount} = \text{Amount of the Allocation per State}$$

*Use FY 1979 enrollment data unless the appropriation exceeds $76,452,287 (the FY 1979 appropriation); 1976-1977 award year enrollment data used for FY 1979. Use most recent enrollment data if appropriation exceeds $76,452,287.

NOTE: This case study illustrates the requirements for allotting funds under the GAP Program under §692.110 and SLEAP Program funding during fiscal year 2010 (the 2010-2011 award year) under §692.70. Apart from State enrollments for fiscal year 1979 used in the allotment formula, nothing in the case study should be considered to reflect any State's actual circumstances or the expected funding for any State.

First Year of GAP Implementation (2010-11)

Conditions:

Appropriation for FY 2010: $63,852,000
LEAP funds for FY 2010: $30,000,000
SLEAP/GAP funds for FY 2010: $33,852,000

Illustrates:

First, must allot to SLEAP applicants (Table A)
Then, use remaining funds for GAP applicants (Table B)

First Year of GAP Implementation (2010-11): SLEAP Allotment (Table A)

Must calculate SLEAP first

Federal Appropriation Available after LEAP Allotment: $33,852,000

State	State Enrollment	Formula Amount	Formula Amount	State SLEAP Allotment	
§ Alabama		$0.00	$0		
‡ Alaska	18,594	$59,494.79	$59,495	**$59,495**	
Arizona	199,274	$637,612.43	$637,612		
§ Arkansas		$0.00	$0		
California	1,798,400	$5,754,299.06	$5,754,299		
Colorado	159,836	$511,423.57	$511,424		
Connecticut	152,431	$487,729.96	$487,730		
Delaware	31,228	$99,919.51	$99,920		
District of Columbia	85,259	$272,801.26	$272,801		
Florida	366,344	$1,172,182.46	$1,172,182		
§ Georgia		$0.00	$0		
§ Hawaii		$0.00	$0		
‡ Idaho	39,198	$125,420.94	$125,421	**$125,421**	
Illinois	632,654	$2,024,288.43	$2,024,288		
Indiana	234,086	$748,999.58	$749,000		
Iowa	125,845	$402,663.35	$402,663		
Kansas	129,705	$415,014.10	$415,014		
Kentucky	142,958	$457,419.42	$457,419		
Louisiana	166,660	$533,258.16	$533,258		
‡ Maine	41,954	$134,239.25	$134,239	**$134,239**	
Maryland	213,490	$683,099.04	$683,099		
§ Massachusetts		$0.00	$0		
‡ Michigan	483,833	$1,548,109.31	$1,548,109	**$1,548,109**	
Minnesota	226,365	$724,294.88	$724,295		
§ Mississippi		$0.00	$0		
Missouri	231,327	$740,171.67	$740,172		
‡ Montana	32,270	$103,253.58	$103,254	**$103,254**	
Nebraska	83,922	$268,523.29	$268,523		
Nevada	31,926	$102,152.89	$102,153		
New Hampshire	40,803	$130,556.42	$130,556		
New Jersey	306,983	$982,246.44	$982,246		
‡ New Mexico	59,420	$190,124.81	$190,125	**$190,125**	
New York	989,409	$3,165,789.19	$3,165,789		
North Carolina	254,199	$813,354.69	$813,355		
North Dakota	31,357	$100,332.27	$100,332		
‡ Ohio	464,069	$1,484,870.89	$1,484,871	**$1,484,871**	
Oklahoma	157,622	$504,339.48	$504,339		
Oregon	150,353	$481,081.03	$481,081		
Pennsylvania	514,421	$1,645,981.03	$1,645,981		
Rhode Island	61,773	$197,653.65	$197,654		
South Carolina	126,628	$405,168.70	$405,169		
§ South Dakota		$0.00	$0		
Tennessee	189,530	$606,434.78	$606,435		
Texas	638,504	$2,043,006.54	$2,043,007		
Utah	86,966	$278,263.11	$278,263		
Vermont	29,398	$94,064.10	$94,064		
Virginia	249,297	$797,669.87	$797,670		
Washington	265,593	$849,811.81	$849,812		
‡ West Virginia	85,012	$272,010.94	$272,011	**$272,011**	
Wisconsin	244,111	$781,076.34	$781,076		
§ Wyoming		$0.00	$0		
‡ American Samoa	836	$2,674.93	$2,675	**$2,675**	
‡ Guam	3,710	$11,870.80	$11,871	**$11,871**	
‡ No. Marianas Island	143	$457.55	$458	**$458**	
§ Puerto Rico		$0.00	$0		
‡ Virgin Islands	2,122	$6,789.71	$6,790	**$6,790**	
Total	10,579,818	$33,852,000.00	$33,852,000	**$3,939,317**	**Total SLEAP Allotments**
				$29,912,683	**Remaining balance for GAP allotment**

Key: ‡ Applies for SLEAP
§ Does not apply or qualify

First Year of GAP Implementation (2010-11): GAP Allotment-with Priority (Table B)

Demonstrate GAP actual allotment with required priority

Federal Appropriation Available for GAP Allotment: $29,912,683

State	State Enrollment with Priority Applied	Formula Amount with Priority Applied	State GAP Allotment with Priority Applied
§ Alabama		$0.00	**$0**
‡ Alaska		$0.00	**$0**
Arizona	199,274	$547,813.66	**$547,814**
§ Arkansas		$0.00	**$0**
# California	2,248,000	$6,179,858.41	**$6,179,858**
Colorado	159,836	$439,396.73	**$439,397**
# Connecticut	190,539	$523,800.04	**$523,800**
# Delaware	39,035	$107,309.06	**$107,309**
District of Columbia	85,259	$234,381.03	**$234,381**
# Florida	457,930	$1,258,871.25	**$1,258,871**
§ Georgia		$0.00	**$0**
§ Hawaii		$0.00	**$0**
‡ Idaho		$0.00	**$0**
# Illinois	790,818	$2,173,994.74	**$2,173,995**
Indiana	234,086	$643,513.49	**$643,513**
Iowa	125,845	$345,953.86	**$345,954**
Kansas	129,705	$356,565.18	**$356,565**
Kentucky	142,958	$392,998.31	**$392,998**
Louisiana	166,660	$458,156.23	**$458,156**
‡ Maine		$0.00	**$0**
Maryland	213,490	$586,894.12	**$586,894**
§ Massachusetts		$0.00	**$0**
‡ Michigan		$0.00	**$0**
Minnesota	226,365	$622,288.10	**$622,288**
§ Mississippi		$0.00	**$0**
Missouri	231,327	$635,928.87	**$635,929**
‡ Montana		$0.00	**$0**
Nebraska	83,922	$230,705.55	**$230,706**
Nevada	31,926	$87,766.09	**$87,766**
New Hampshire	40,803	$112,169.38	**$112,169**
# New Jersey	383,729	$1,054,888.50	**$1,054,888**
‡ New Mexico		$0.00	**$0**
New York	989,409	$2,719,932.17	**$2,719,932**
# North Carolina	317,749	$873,506.35	**$873,506**
North Dakota	31,357	$86,201.88	**$86,202**
‡ Ohio		$0.00	**$0**
# Oklahoma	197,028	$541,637.92	**$541,638**
# Oregon	187,941	$516,659.39	**$516,659**
# Pennsylvania	643,026	$1,767,709.60	**$1,767,710**
# Rhode Island	77,216	$212,271.13	**$212,271**
South Carolina	126,628	$348,106.37	**$348,106**
§ South Dakota		$0.00	**$0**
# Tennessee	236,913	$651,283.68	**$651,284**
# Texas	798,130	$2,194,097.15	**$2,194,097**
# Utah	108,708	$298,842.06	**$298,842**
# Vermont	36,748	$101,020.62	**$101,021**
# Virginia	311,621	$856,661.57	**$856,662**
# Washington	331,991	$912,659.66	**$912,660**
‡ West Virginia		$0.00	**$0**
# Wisconsin	305,139	$838,840.87	**$838,841**
§ Wyoming		$0.00	**$0**
‡ American Samoa		$0.00	**$0**
‡ Guam		$0.00	**$0**
‡ No. Marianas Islands		$0.00	**$0**
§ Puerto Rico		$0.00	**$0**
‡ Virgin Islands		$0.00	**$0**
Total	10,881,109	$29,912,683.00	**$29,912,683**

Key: # Priority States, 125% applied
‡ Applies for SLEAP
§ Does not apply or qualify

Second Year of GAP Implementation (2011-12): GAP Allotment-Initial Calculation (Table C)

Second Year of GAP Implementation (2011-12)

Conditions:

Appropriation for FY 2011: $63,852,000 (level funding from prior year)
LEAP funds for FY 2011: $30,000,000
GAP funds for FY 2011: $33,852,000
12 States initially apply for GAP funding (WV with priority)
Priority States in FY 2010 continue as priority States
IN and IA, continuing States, convert to priority States

Illustrates:

Insufficient funds are available to fund all applicants and meet continuing award requirement (Table C)
Continuing awards are based on prior year (Table D)
IN and IA are funded based on prior year; priority superseded (Table D)
New applicants receive remaining available funds, $3,912,317 (E)

Perform initial calculation to determine if negative changes from prior year awards
Federal Appropriation Available for GAP Allotment: 33,852,000

State	State Enrollment with Priority Applied	Formula Amount	State Allotment Calculation	Prior Year Allotment	Change from Allotment
§ Alabama		$0.00	$0	$0	0
§ Alaska		$0.00	$0	$0	0
Arizona	199,274	$531,382.91	$531,383	$547,814	-16,431
> Arkansas	74,057	$197,479.97	$197,480	$0	197,480
# California	2,248,000	$5,994,503.99	$5,994,504	$6,179,858	-185,354
Colorado	159,836	$426,217.77	$426,218	$439,397	-13,179
# Connecticut	190,539	$508,089.54	$508,090	$523,800	-15,710
# Delaware	39,035	$104,090.51	$104,091	$107,309	-3,219
District of Columbia	85,259	$227,351.16	$227,351	$234,381	-7,030
# Florida	457,930	$1,221,113.53	$1,221,114	$1,258,871	-37,758
§ Georgia		$0.00	$0	$0	0
§ Hawaii		$0.00	$0	$0	0
> Idaho	39,198	$104,525.16	$104,525	$0	104,525
# Illinois	790,818	$2,108,789.44	$2,108,789	$2,173,995	-65,205
+ Indiana	292,608	$780,265.49	$780,265	$643,513	136,752
+ Iowa	157,306	$419,471.95	$419,472	$345,954	73,518
Kansas	129,705	$345,870.61	$345,871	$356,565	-10,695
Kentucky	142,958	$381,210.99	$381,211	$392,998	-11,787
Louisiana	166,660	$444,414.61	$444,415	$458,156	-13,742
> Maine	41,954	$111,874.30	$111,874	$0	111,874
Maryland	213,490	$569,291.22	$569,291	$586,894	-17,603
> Massachusetts	376,361	$1,003,602.10	$1,003,602	$0	1,003,602
> Michigan	483,833	$1,290,186.32	$1,290,186	$0	1,290,186
Minnesota	226,365	$603,623.62	$603,624	$622,288	-18,664
> Mississippi	99,078	$264,200.83	$264,201	$0	264,201
Missouri	231,327	$616,855.26	$616,855	$635,929	-19,074
> Montana	32,270	$86,051.00	$86,051	$0	86,051
Nebraska	83,922	$223,785.93	$223,786	$230,706	-6,920
Nevada	31,926	$85,133.69	$85,134	$87,766	-2,632
New Hampshire	40,803	$108,805.05	$108,805	$112,169	-3,364
# New Jersey	383,729	$1,023,248.90	$1,023,249	$1,054,888	-31,640
§ New Mexico		$0.00	$0	$0	0
New York	989,409	$2,638,352.40	$2,638,352	$2,719,932	-81,580
# North Carolina	317,749	$847,307.01	$847,307	$873,506	-26,199
North Dakota	31,357	$83,616.40	$83,616	$86,202	-2,585
> Ohio	464,069	$1,237,483.75	$1,237,484	$0	1,237,484
# Oklahoma	197,028	$525,392.41	$525,392	$541,638	-16,246
# Oregon	187,941	$501,163.07	$501,163	$516,659	-15,496
# Pennsylvania	643,026	$1,714,690.13	$1,714,690	$1,767,710	-53,019
# Rhode Island	77,216	$205,904.41	$205,904	$212,271	-6,367
South Carolina	126,628	$337,665.50	$337,666	$348,106	-10,441
§ South Dakota		$0.00	$0	$0	0
# Tennessee	236,913	$631,749.52	$631,750	$651,284	-19,534
# Texas	798,130	$2,128,288.91	$2,128,289	$2,194,097	-65,808
# Utah	108,708	$289,878.80	$289,879	$298,842	-8,963
# Vermont	36,748	$97,990.67	$97,991	$101,021	-3,030
# Virginia	311,621	$830,967.45	$830,967	$856,662	-25,694
# Washington	331,991	$885,285.98	$885,286	$912,660	-27,374
>+ West Virginia	106,265	$283,365.64	$283,366	$0	283,366
# Wisconsin	305,139	$813,681.25	$813,681	$838,841	-25,160
§ Wyoming		$0.00	$0	$0	0
> American Samoa	836	$2,229.27	$2,229	$0	2,229
> Guam	3,710	$9,893.06	$9,893	$0	9,893
§ No. Marianas Island		$0.00	$0	$0	0
§ Puerto Rico		$0.00	$0	$0	0
> Virgin Islands	2,122	$5,658.51	$5,659	$0	5,659
Total	12,694,845	$33,852`,000.00	$33,852,000		

Key: § Does not apply or qualify
> New applicant
 # Priority States, 125% applied
+ New Priority States, 125% applied

Second Year of GAP Implementation (2011-12): GAP Allotment-Continuing Awards (Table D)

No calculation: carry over GAP allotment amounts from prior year

Federal Appropriation Available for GAP Allotment: $29,912,683

State	Prior Year Allotment	No Formula Amount	State Allotment Continuing Awards
§ Alabama	$0		$0
§ Alaska	$0		$0
Arizona	$547,814		$547,814
> Arkansas	$0		$0
# California	$6,179,858		$6,179,858
Colorado	$439,397		$439,397
# Connecticut	$523,800		$523,800
# Delaware	$107,309		$107,309
District of Columbia	$234,381		$234,381
# Florida	$1,258,871		$1,258,871
§ Georgia	$0		$0
§ Hawaii	$0		$0
> Idaho	$0		$0
# Illinois	$2,173,995		$2,173,995
+ Indiana	$643,513		$643,513
+ Iowa	$345,954		$345,954
Kansas	$356,565		$356,565
Kentucky	$392,998		$392,998
Louisiana	$458,156		$458,156
> Maine	$0		$0
Maryland	$586,894		$586,894
> Massachusetts	$0		$0
> Michigan	$0		$0
Minnesota	$622,288		$622,288
> Mississippi	$0		$0
Missouri	$635,929		$635,929
> Montana	$0		$0
Nebraska	$230,706		$230,706
Nevada	$87,766		$87,766
New Hampshire	$112,169		$112,169
# New Jersey	$1,054,888		$1,054,888
§ New Mexico	$0		$0
New York	$2,719,932		$2,719,932
# North Carolina	$873,506		$873,506
North Dakota	$86,202		$86,202
> Ohio	$0		$0
# Oklahoma	$541,638		$541,638
# Oregon	$516,659		$516,659
# Pennsylvania	$1,767,710		$1,767,710
# Rhode Island	$212,271		$212,271
South Carolina	$348,106		$348,106
§ South Dakota	$0		$0
# Tennessee	$651,284		$651,284
# Texas	$2,194,097		$2,194,097
# Utah	$298,842		$298,842
# Vermont	$101,021		$101,021
# Virginia	$856,662		$856,662
# Washington	$912,660		$912,660
>+ West Virginia	$0		$0
# Wisconsin	$838,841		$838,841
§ Wyoming	$0		$0
> American Samoa	$0		$0
> Guam	$0		$0
§ No. Marianas Island	$0		$0
§ Puerto Rico	$0		$0
> Virgin Islands	$0		$0
Total	29,912,683		$29,912,683

Key: § Does not apply or qualify
> New applicant
 # Priority States, + New Priority } Priority not applied

Second Year of GAP Implementation (2011-12): GAP Allotment - New Applicants (Table E)
Calculate new applicant allotments using basic allotment formula
Federal Appropriation Available for GAP Allotment: 3,939,317

State	State Enrollment with Priority Applied	Formula Amount	State Allotment
§ Alabama		$0.00	$0
§ Alaska		$0.00	$0
Arizona		$0.00	$0
> Arkansas	74,057	$169,243.50	$169,244
# California		$0.00	$0
Colorado		$0.00	$0
# Connecticut		$0.00	$0
# Delaware		$0.00	$0
District of Columbia		$0.00	$0
# Florida		$0.00	$0
§ Georgia		$0.00	$0
§ Hawaii		$0.00	$0
> Idaho	39,198	$89,579.74	$89,580
# Illinois		$0.00	$0
Indiana		$0.00	$0
Iowa		$0.00	$0
Kansas		$0.00	$0
Kentucky		$0.00	$0
Louisiana		$0.00	$0
> Maine	41,954	$95,878.07	$95,878
Maryland		$0.00	$0
> Massachusetts	376,361	$860,103.09	$860,103
> Michigan	483,833	$1,105,710.37	$1,105,710
Minnesota		$0.00	$0
> Mississippi	99,078	$226,424.35	$226,424
Missouri		$0.00	$0
> Montana	32,270	$73,747.09	$73,747
Nebraska		$0.00	$0
Nevada		$0.00	$0
New Hampshire		$0.00	$0
# New Jersey		$0.00	$0
§ New Mexico		$0.00	$0
New York		$0.00	$0
# North Carolina		$0.00	$0
North Dakota		$0.00	$0
> Ohio	464,069	$1,060,543.42	$1,060,543
# Oklahoma		$0.00	$0
# Oregon		$0.00	$0
# Pennsylvania		$0.00	$0
# Rhode Island		$0.00	$0
South Carolina		$0.00	$0
§ South Dakota		$0.00	$0
# Tennessee		$0.00	$0
# Texas		$0.00	$0
# Utah		$0.00	$0
# Vermont		$0.00	$0
# Virginia		$0.00	$0
# Washington		$0.00	$0
># West Virginia	106,265	$242,848.90	$242,849
# Wisconsin		$0.00	$0
§ Wyoming		$0.00	$0
> American Samoa	836	$1,910.52	$1,911
> Guam	3,710	$8,478.52	
§ No. Marianas Island			$0.00
§ Puerto Rico		$0.00	$0
> Virgin Islands	2,122	$4,849.44	$4,849
Total	1,723,753	$3,939,317.00	$3,939,317

Key: § Does not apply or qualify
> New applicant
+ New priority State, 125% applied

Third Year of GAP Implementation (2012-13)

Conditions:

Appropriation for FY 2012: $61,000,000 (reduction from prior year)
LEAP funds for FY 2012: $30,000,000
GAP funds for FY 2012: $31,000,000
One new applicant, NM, with priority
Priority States in FY 2010 and 2011 continue as priority States

Illustrates:

Funds are insufficient to fund continuing awards (Table F)
Continuing awards are ratably reduced based on prior year allotment (Table G)
IN and IA are subject to ratable reduction based on prior year allotment; no priority applied (Table G)
New applicant, NM, is also subject to ratable reduction; reduced to zero (Table G)

Third Year of GAP Implementation (2012-13): GAP Allotment-Initial Calculation (Table F)
Perform initial calculation to determine if there are negative changes from prior year awards
Federal Appropriation Available for GAP Allotment: 31,000,000

State	State Enrollment with Priority Applied	Formula Amount	State Allotment Initial Calculation	Prior Year Allotment	Change from Prior Year Allotment
§ Alabama		$0.00	$0	$0	0
§ Alaska		$0.00	$0	$0	0
Arizona	199,274	$483,783.87	$483,784	$547,814	-64,030
Arkansas	74,057	$179,790.55	$179,791	$169,244	10,547
# California	2,248,000	$5,457,541.53	$5,457,542	$6,179,858	-722,317
Colorado	159,836	$388,038.97	$388,039	$439,397	-51,358
# Connecticut	190,539	$462,577.02	$462,577	$523,800	-61,223
# Delaware	39,035	$94,766.52	$94,767	$107,309	-12,543
District of Columbia	85,259	$206,986.00	$206,986	$234,381	-27,395
# Florida	457,930	$1,111,731.31	$1,111,731	$1,258,871	-147,140
§ Georgia		$0.00	$0	$0	0
§ Hawaii		$0.00	$0	$0	0
Idaho	39,198	$95,162.24	$95,162	$89,580	5,582
# Illinois	790,818	$1,919,892.95	$1,919,893	$2,173,995	-254,102
+ Indiana	292,608	$710,372.59	$710,373	$643,513	66,859
+ Iowa	157,306	$381,897.42	$381,897	$345,954	35,944
Kansas	129,705	$314,888.98	$314,889	$356,565	-41,676
Kentucky	142,958	$347,063.71	$347,064	$392,998	-45,935
Louisiana	166,660	$404,605.81	$404,606	$458,156	-53,550
Maine	41,954	$101,853.07	$101,853	$95,878	5,975
Maryland	213,490	$518,296.50	$518,297	$586,894	-68,598
Massachusetts	376,361	$913,703.64	$913,704	$860,103	53,601
Michigan	483,833	$1,174,616.86	$1,174,617	$1,105,710	68,907
Minnesota	226,365	$549,553.55	$549,554	$622,288	-72,735
Mississippi	99,078	$240,534.83	$240,535	$226,424	14,111
Missouri	231,327	$561,599.96	$561,600	$635,929	-74,329
Montana	32,270	$78,342.91	$78,343	$73,747	4,596
Nebraska	83,922	$203,740.12	$203,740	$230,706	-26,965
Nevada	31,926	$77,507.77	$77,508	$87,766	-10,258
New Hampshire	40,803	$99,058.75	$99,059	$112,169	-13,111
# New Jersey	383,729	$931,590.57	$931,591	$1,054,888	-123,298
>+ New Mexico	74,275	$180,319.79	$180,320	$0	180,320
New York	989,409	$2,402,019.89	$2,402,020	$2,719,932	-317,912
# North Carolina	317,749	$771,408.81	$771,409	$873,506	-102,098
North Dakota	31,357	$76,126.39	$76,126	$86,202	-10,075
Ohio	464,069	$1,126,635.16	$1,126,635	$1,060,543	66,092
# Oklahoma	197,028	$478,329.97	$478,330	$541,638	-63,308
# Oregon	187,941	$456,270.99	$456,271	$516,659	-60,388
# Pennsylvania	643,026	$1,561,095.40	$1,561,095	$1,767,710	-206,614
# Rhode Island	77,216	$187,460.36	$187,460	$212,271	-24,811
South Carolina	126,628	$307,418.85	$307,419	$348,106	-40,688
§ South Dakota		$0.00	$0	$0	0
# Tennessee	236,913	$575,160.06	$575,160	$651,284	-76,124
# Texas	798,130	$1,937,645.74	$1,937,646	$2,194,097	-256,451
# Utah	108,708	$263,912.68	$263,913	$298,842	-34,929
# Vermont	36,748	$89,213.08	$89,213	$101,021	-11,808
# Virginia	311,621	$756,532.88	$756,533	$856,662	-100,129
# Washington	331,991	$805,985.78	$805,986	$912,660	-106,674
# West Virginia	106,265	$257,982.94	$257,983	$242,849	15,134
# Wisconsin	305,139	$740,795.11	$740,795	$838,841	-98,046
§ Wyoming		$0.00	$0	$0	0
American Samoa	836	$2,029.58	$2,030	$1,911	119
Guam	3,710	$9,006.89	$9,007	$8,479	528
§ No. Marianas Island		$0.00	$0	$0	0
§ Puerto Rico		$0.00	$0	$0	0
Virgin Islands	2,122	$5,151.65	$5,152	$4,849	303
Total	**12,769,120**	**$31,000,000.00**	**$31,000,000**		

Key: # Priority States, 125% applied
+ Priority not previously funded
>+ New applicant, 125% priority
§ Does not apply or qualify

Third Year of GAP Implementation (2012-13): Ratable Reduction (Table G)

Calculate ratable reduction based on proportions of prior year allotment

Federal Appropriation Available for GAP Allotment: $31,000,000

State	Prior Year Allotment	Formula Amount	State Allotment	Change from Prior Year Allotment
§ Alabama	$0	$0.00	**$0**	0
§ Alaska	$0	$0.00	**$0**	0
Arizona	$547,814	$501,660.86	**$501,661**	-46,153
Arkansas	$169,244	$154,985.35	**$154,985**	-14,259
# California	$6,179,858	$5,659,211.00	**$5,659,211**	-520,647
Colorado	$439,397	$402,377.96	**$402,378**	-37,019
# Connecticut	$523,800	$479,670.37	**$479,670**	-44,130
# Delaware	$107,309	$98,268.37	**$98,268**	-9,041
District of Columbia	$234,381	$214,634.64	**$214,635**	-19,746
# Florida	$1,258,871	$1,152,812.50	**$1,152,812**	-106,059
§ Georgia	$0	$0.00	**$0**	0
§ Hawaii	$0	$0.00	**$0**	0
Idaho	$89,580	$82,032.97	**$82,033**	-7,547
# Illinois	$2,173,995	$1,990,837.67	**$1,990,838**	-183,157
+ Indiana	$643,513	$589,298.07	**$589,298**	-54,215
+ Iowa	$345,954	$316,807.57	**$316,808**	-29,146
Kansas	$356,565	$326,524.89	**$326,525**	-30,040
Kentucky	$392,998	$359,888.56	**$359,889**	-33,110
Louisiana	$458,156	$419,556.99	**$419,557**	-38,599
Maine	$95,878	$87,800.37	**$87,800**	-8,078
Maryland	$586,894	$537,448.82	**$537,449**	-49,445
Massachusetts	$860,103	$787,640.11	**$787,640**	-72,463
Michigan	$1,105,710	$1,012,554.95	**$1,012,555**	-93,155
Minnesota	$622,288	$569,860.90	**$569,861**	-52,427
Mississippi	$226,424	$207,347.99	**$207,348**	-19,076
Missouri	$635,929	$582,352.45	**$582,352**	-53,576
Montana	$73,747	$67,533.88	**$67,534**	-6,213
Nebraska	$230,706	$211,268.82	**$211,269**	-19,437
Nevada	$87,766	$80,371.87	**$80,372**	-7,394
New Hampshire	$112,169	$102,719.21	**$102,719**	-9,450
# New Jersey	$1,054,888	$966,015.11	**$966,015**	-88,873
> + New Mexico	$0	$0.00	**$0**	0
New York	$2,719,932	$2,490,780.38	**$2,490,780**	-229,152
# North Carolina	$873,506	$799,914.24	**$799,914**	-73,592
North Dakota	$86,202	$78,939.45	**$78,939**	-7,262
Ohio	$1,060,543	$971,193.22	**$971,193**	-89,350
# Oklahoma	$541,638	$496,005.42	**$496,005**	-45,632
# Oregon	$516,659	$473,131.31	**$473,131**	-43,528
# Pennsylvania	$1,767,710	$1,618,781.68	**$1,618,782**	-148,928
# Rhode Island	$212,271	$194,387.48	**$194,387**	-17,884
South Carolina	$348,106	$318,778.72	**$318,779**	-29,328
§ South Dakota	$0	$0.00	**$0**	0
# Tennessee	$651,284	$596,413.62	**$596,414**	-54,870
# Texas	$2,194,097	$2,009,246.47	**$2,009,246**	-184,851
# Utah	$298,842	$273,664.89	**$273,665**	-25,177
# Vermont	$101,021	$92,509.72	**$92,510**	-8,511
# Virginia	$856,662	$784,488.61	**$784,489**	-72,173
# Washington	$912,660	$835,768.92	**$835,769**	-76,891
# West Virginia	$242,849	$222,389.19	**$222,389**	-20,460
# Wisconsin	$838,841	$768,169.29	**$768,169**	-70,672
§ Wyoming	$0	$0.00	**$0**	0
American Samoa	$1,911	$1,750.00	**$1,750**	-161
Guam	$8,479	$7,764.65	**$7,765**	-714
§ No. Marianas Island	$0	$0.00	**$0**	0
§ Puerto Rico	$0	$0.00	**$0**	0
Virgin Islands	$4,849	$4,440.48	**$4,440**	-409
Total	33,852,000	$31,000,000.00	**$31,000,000**	

Key: # Ratable reduction; priority previously applied, now superseded

+ Ratable reduction; priority superseded

§ Does not apply or qualify

> + New applicant receives $0

Fourth Year of GAP Implementation (2013-14)

Conditions:
Appropriation for FY 2013: $71,000,000 (increase in funding from prior year)
LEAP funds for FY 2013: $30,000,000
GAP funds for FY 2013: $41,000,000
Priority States in FY 2010, 2011, and 2012 continue as priority States

Illustrates:
Sufficient funds are available, no ratable reduction necessary (Table H)
IN and IA priority is applied (Table H)
NM initially funded with priority (Table H)

Fourth Year of GAP Implementation (2013-14) (Table H)

Calculate using basic formula with all priorities applied

Federal Appropriation Available for GAP Allotment: $41,000,000

State	State Enrollment with Priority Applied	Formula Amount	State Allotment	Prior Year Allotment	Change from Prior Year Allotment
§ Alabama		$0.00	**$0**	$0	0
§ Alaska		$0.00	**$0**	$0	0
Arizona	199,274	$639,843.18	**$639,843**	$490,916	148,927
Arkansas	74,057	$237,787.50	**$237,787**	$182,441	55,346
# California	2,248,000	$7,218,038.80	**$7,218,039**	$5,537,998	1,680,041
Colorado	159,836	$513,212.83	**$513,213**	$393,760	119,453
# Connecticut	190,539	$611,795.41	**$611,795**	$469,396	142,399
# Delaware	39,035	$125,336.36	**$125,336**	$96,164	29,173
District of Columbia	85,259	$273,755.68	**$273,756**	$210,037	63,718
# Florida	457,930	$1,470,354.32	**$1,470,354**	$1,128,121	342,234
§ Georgia		$0.00	**$0**	$0	0
§ Hawaii		$0.00	**$0**	$0	0
Idaho	39,198	$125,859.74	**$125,860**	$96,565	29,295
# Illinois	790,818	$2,539,213.26	**$2,539,213**	$1,948,196	591,017
+ Indiana	292,608	$939,525.04	**$939,525**	$576,676	362,849
+ Iowa	157,306	$505,090.13	**$505,090**	$310,022	195,068
Kansas	129,705	$416,466.07	**$416,466**	$319,531	96,935
Kentucky	142,958	$459,019.75	**$459,020**	$352,180	106,840
Louisiana	166,660	$535,123.82	**$535,124**	$410,571	124,553
Maine	41,954	$134,708.90	**$134,709**	$103,355	31,354
Maryland	213,490	$685,488.93	**$685,489**	$525,937	159,552
Massachusetts	376,361	$1,208,446.75	**$1,208,447**	$927,174	281,273
Michigan	483,833	$1,553,525.52	**$1,553,526**	$1,191,933	361,592
Minnesota	226,365	$726,828.89	**$726,829**	$557,655	169,174
Mississippi	99,078	$318,126.71	**$318,127**	$244,081	74,046
Missouri	231,327	$742,761.24	**$742,761**	$569,879	172,882
Montana	32,270	$103,614.82	**$103,615**	$79,498	24,117
Nebraska	83,922	$269,462.75	**$269,463**	$206,744	62,719
Nevada	31,926	$102,510.28	**$102,510**	$78,650	23,860
New Hampshire	40,803	$131,013.18	**$131,013**	$100,519	30,494
# New Jersey	383,729	$1,232,103.65	**$1,232,104**	$945,324	286,779
> + New Mexico	74,275	$238,487.47	**$238,487**	$0	238,487
New York	989,409	$3,176,865.01	**$3,176,865**	$2,437,431	739,434
# North Carolina	317,749	$1,020,250.36	**$1,020,250**	$782,781	237,469
North Dakota	31,357	$100,683.29	**$100,683**	$77,249	23,435
Ohio	464,069	$1,490,065.86	**$1,490,066**	$1,143,244	346,822
# Oklahoma	197,028	$632,629.96	**$632,630**	$485,382	147,248
# Oregon	187,941	$603,455.18	**$603,455**	$462,997	140,458
# Pennsylvania	643,026	$2,064,674.57	**$2,064,675**	$1,584,109	480,565
# Rhode Island	77,216	$247,931.45	**$247,931**	$190,224	57,707
South Carolina	126,628	$406,586.22	**$406,586**	$311,951	94,635
§ South Dakota		$0.00	**$0**	$0	0
# Tennessee	236,913	$760,695.56	**$760,696**	$583,639	177,056
# Texas	798,130	$2,562,692.75	**$2,562,693**	$1,966,211	596,482
# Utah	108,708	$349,045.80	**$349,046**	$267,803	81,242
# Vermont	36,748	$117,991.50	**$117,991**	$90,528	27,463
# Virginia	311,621	$1,000,575.74	**$1,000,576**	$767,686	232,890
# Washington	331,991	$1,065,981.19	**$1,065,981**	$817,868	248,113
# West Virginia	106,265	$341,203.24	**$341,203**	$209,429	131,774
# Wisconsin	305,139	$979,761.27	**$979,761**	$751,716	228,045
§ Wyoming		$0.00	**$0**	$0	0
American Samoa	836	$2,684.29	**$2,684**	$2,060	625
Guam	3,710	$11,912.33	**$11,912**	$9,140	2,773
§ No. Marianas Island		$0.00	**$0**	$0	0
§ Puerto Rico		$0.00	**$0**	$0	0
Virgin Islands	2,122	$6,813.47	**$6,813**	$5,228	1,586
Total	12,769,120	$41,000,000.00	**$41,000,000**		

Key: # Priority States, 125% applied
> New applicant
+ Priority initially applied
§ Does not apply or qualify

[FR Doc. E9–18550 Filed 8–20–09; 8:45 am]

BILLING CODE 4000–01–C

Federal Register

Friday,
August 21, 2009

Part III

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5280–N–32]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Army:* Ms. Veronica Rines, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, DAIM–ZS, Room 8536, 2511 Jefferson Davis Hwy., Arlington, VA 22202; (703) 601–2545; (These are not toll-free numbers).

Dated: August 13, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 08/21/2009

Suitable/Available Properties

Building

Alaska

Bldg. 00001
Kiana Natl Guard Armory
Kiana AK 99749
Landholding Agency: Army
Property Number: 21200340075
Status: Excess
Comments: 1200 sq. ft., butler bldg., needs repair, off-site use only

Bldg. 00001
Holy Cross Armory
High Cross AK 99602
Landholding Agency: Army
Property Number: 21200710051
Status: Excess
Comments: 1200 sq. ft. armory, off-site use only

Bldg. 105
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820144
Status: Excess
Comments: 4992 sq. ft., most recent use—housing, off-site use only

Bldgs. 112, 113, 114, 115
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820145
Status: Excess
Comments: 5184 sq. ft., most recent use—housing, off-site use only

Bldgs. 120, 129, 139, 148
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820146
Status: Excess
Comments: 4766 sq. ft., most recent use—housing, off-site use only

Bldg. 136
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820147
Status: Excess
Comments: 2383 sq. ft., most recent use—housing, off-site use only

Bldgs. 366, 367, 371, 373
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820148
Status: Excess
Comments: 13,743 sq. ft., most recent use—housing, off-site use only

Bldgs. 369, 372
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army

Property Number: 21200820149
Status: Excess
Comments: 12,642 sq. ft., most recent use—housing, off-site use only

Bldgs. 392, 394
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820150
Status: Excess
Comments: 18,496 sq. ft., most recent use—housing, off-site use only

12 Bldgs.
Ft. Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200820151
Status: Excess
Directions: 413, 414, 415, 416, 417, 418, 424, 425, 427, 428, 429, 431
Comments: 13,056 sq. ft., most recent use—housing, off-site use only

5 Bldgs.
Fort Richardson
Anchorage AK 99505
Landholding Agency: Army
Property Number: 21200930001
Status: Unutilized
Directions: 47434, RANNC, RANOC, RANRC, RANZC
Comments: 432/256 sq. ft., off-site use only

Arizona

Bldg. S–306
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Landholding Agency: Army
Property Number: 21199420346
Status: Unutilized
Comments: 4103 sq. ft., 2-story, needs major rehab, off-site use only

Bldg. 503, Yuma Proving Ground
Yuma Co: Yuma AZ 85365–9104
Landholding Agency: Army
Property Number: 21199520073
Status: Underutilized
Comments: 3789 sq. ft., 2-story, major structural changes required to meet floor loading code requirements, presence of asbestos, off-site use only

Bldg. 43002
Fort Huachuca
Cochise AZ 85613–7010
Landholding Agency: Army
Property Number: 21200440066
Status: Excess
Comments: 23,152 sq. ft., presence of asbestos/lead paint, most recent use—dining, off-site use only

Bldg. 90551
Fort Huachuca
Cochise AZ 85613
Landholding Agency: Army
Property Number: 21200920001
Status: Excess
Comments: 1270 sq. ft., most recent use—office, off-site use only

California

Bldgs. 18026, 18028
Camp Roberts
Monterey CA 93451–5000
Landholding Agency: Army
Property Number: 21200130081
Status: Excess
Comments: 2024 sq. ft. sq. ft., concrete, poor condition, off-site use only

Bldg. 00052
Moffett Community Housing
Vernon Ave.
Santa Clara CA 94035
Landholding Agency: Army
Property Number: 21200930002
Status: Unutilized
Comments: 4530 sq ft., most recent use—mini mart/meeting rooms, off-site use only

Colorado

Bldgs. 25, 26, 27
Pueblo Chemical Depot
Pueblo CO 81006
Landholding Agency: Army
Property Number: 21200420178
Status: Unutilized
Comments: 1311 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. 00127
Pueblo Chemical Depot
Pueblo CO 81006
Landholding Agency: Army
Property Number: 21200420179
Status: Unutilized
Comments: 8067 sq. ft., presence of asbestos, most recent use—barracks, off-site use only

Bldg. 01516
Fort Carson
El Paso CO 80913
Landholding Agency: Army
Property Number: 21200640116
Status: Unutilized
Comments: 723 sq. ft., needs repair, most recent use—storage, off-site use only

Georgia

Bldg. 322
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 21199720156
Status: Unutilized
Comments: 9600 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 2593
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 21199720167
Status: Unutilized
Comments: 13644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only

Bldg. 2595
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 21199720168
Status: Unutilized
Comments: 3356 sq. ft., needs rehab, most recent use—chapel, off-site use only

Bldg. 4232
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 21199830291
Status: Unutilized
Comments: 3720 sq. ft., needs rehab, most recent use—maint. bay, off-site use only

Bldgs. 5974–5978
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 21199930135
Status: Unutilized
Comments: 400 sq. ft., most recent use—storage, off-site use only

Bldg. 5993
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 21199930136
Status: Unutilized
Comments: 960 sq. ft., most recent use—storage, off-site use only

Bldg. T–1003
Fort Stewart
Hinesville Co: Liberty GA 31514
Landholding Agency: Army
Property Number: 21200030085
Status: Excess
Comments: 9267 sq. ft., poor condition, most recent use—admin., off-site use only

Bldg. T0130
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230041
Status: Excess
Comments: 10,813 sq. ft., off-site use only

Bldg. T0157
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230042
Status: Excess
Comments: 1440 sq. ft., off-site use only

Bldgs. T291, T292
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230044
Status: Excess
Comments: 5220 sq. ft. each, off-site use only

Bldg. T0295
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230045
Status: Excess
Comments: 5220 sq. ft., off-site use only

Bldg. 4476
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Landholding Agency: Army
Property Number: 21200420034
Status: Excess
Comments: 3148 sq. ft., most recent use—veh. maint. shop, off-site use only

Bldg. 9029
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Landholding Agency: Army
Property Number: 21200420050
Status: Excess
Comments: 7356 sq. ft., most recent use—heat plant bldg., off-site use only

Bldg. T924
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420194
Status: Excess
Comments: 9360 sq. ft., most recent use—warehouse, off-site use only

Bldg. 00924
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200510065
Status: Excess
Comments: 9360 sq. ft., most recent use—warehouse, off-site use only

Bldg. 08585
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200530078
Status: Excess
Comments: 165 sq. ft., most recent use—plant, off-site use only

Bldg. 01150
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200610037
Status: Excess
Comments: 137 sq. ft., most recent use—flam mat storage, off-site use only

Bldg. 01151
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200610038
Status: Excess
Comments: 78 sq. ft., most recent use—flam mat storage, off-site use only

Bldg. 01153
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200610039
Status: Excess
Comments: 211 sq. ft., most recent use—flam mat storage, off-site use only

Bldg. 01530
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610048
Status: Excess
Comments: 80 sq. ft., most recent use—scale house, off-site use only

Bldg. 08032
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610051
Status: Excess
Comments: 2592 sq. ft., needs rehab, most recent use—storage/stable, off-site use only

Bldg. 07783
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200640093
Status: Excess
Comments: 8640 sq. ft., most recent use—maintenance hangar, off-site use only

Bldg. 08061
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200640094
Status: Excess
Comments: 1296 sq. ft., most recent use—weather station, off-site use only

Bldg. 00100
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740052
Status: Excess
Comments: 10893 sq. ft., most recent use—battalion hdqts., off-site use only

Bldg. 00129
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740053
Status: Excess
Comments: 4815 sq. ft., presence of asbestos, most recent use—religious education facility, off-site use only

Bldg. 00145
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740054
Status: Excess
Comments: 11590 sq. ft., presence of asbestos, most recent use—post chapel, off-site use only

Bldg. 00811
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740055
Status: Excess
Comments: 42853 sq. ft., most recent use—co hq bldg, off-site use only

Bldg. 00812
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740056
Status: Excess
Comments: 1080 sq. ft., most recent use—power plant, off-site use only

Bldg. 00850
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740057
Status: Excess
Comments: 108,287 sq. ft., presence of asbestos, most recent use—aircraft hangar, off-site use only

Bldg. 00860
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740058
Status: Excess
Comments: 10679 sq. ft., presence of asbestos, most recent use—maint. hangar, off-site use only

Bldg. 01028
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200740059
Status: Excess
Comments: 870 sq ft., most recent use—storage, off-site use only

Bldg. 00955
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200740060
Status: Excess
Comments: 120 sq. ft., most recent use—storage, off-site use only

Bldg. 00957
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200740061
Status: Excess
Comments: 6072 sq. ft., most recent use—recycling facility, off-site use only

Bldg. 00971
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200740062
Status: Excess
Comments: 4000 sq. ft., most recent use—vehicle maint., off-site use only

Bldg. 01015
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200740063
Status: Excess
Comments: 7496 sq. ft., most recent use—storage, off-site use only

Bldg. 01209
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200740064
Status: Excess
Comments: 4786 sq. ft., presence of asbestos, most recent use—vehicle maint., off-site use only

Bldg. 07335
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200740065
Status: Excess
Comments: 4400 sq. ft., most recent use—chapel, off-site use only

Bldg. 245
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200740178
Status: Unutilized
Comments: 1102 sq. ft., most recent use—fld ops, off-site use only

Bldg. 2748
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200740180
Status: Unutilized
Comments: 3990 sq. ft., most recent use—office, off-site use only

Bldg. 3866
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200740182
Status: Unutilized
Comments: 944 sq. ft., most recent use—office, off-site use only

Bldg. 8682
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200740183
Status: Unutilized
Comments: 780 sq. ft., most recent use—admin., off-site use only

Bldg. 10800

Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200740184
Status: Unutilized
Comments: 16,628 sq. ft., off-site use only

Bldgs. 11302, 11303, 11304
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200740185
Status: Unutilized
Comments: various sq. ft., most recent use—ACS center, off-site use only

Bldg. 0297
Ft. Benning
Chattahoochie GA 31905
Landholding Agency: Army
Property Number: 21200810045
Status: Excess
Comments: 4839 sq. ft., most recent use—riding stable, off-site use only

Bldg. 3819
Ft. Benning
Chattahoochie GA 31905
Landholding Agency: Army
Property Number: 21200810046
Status: Excess
Comments: 4241 sq. ft., most recent use—training, off-site use only

Bldg. 10802
Ft. Benning
Chattahoochie GA 31905
Landholding Agency: Army
Property Number: 21200810047
Status: Excess
Comments: 3182 sq. ft., most recent use—storage, off-site use only

Bldg. 00926
Hunter Army Airfield
Savannah GA 31409
Landholding Agency: Army
Property Number: 21200840061
Status: Excess
Comments: 1752 sq. ft., most recent use—BN, HQ bldg., off-site use only

Bldg. 01021
Hunter Army Airfield
Savannah GA 31409
Landholding Agency: Army
Property Number: 21200840062
Status: Excess
Comments: 6855 sq. ft., most recent use—admin., presence of asbestos, off-site use only

Bldg. 07335
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200840063
Status: Excess
Comments: 4400 sq. ft., most recent use—chapel, off-site use only

Bldg. 07778
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200840064
Status: Excess
Comments: 1189 sq. ft., most recent use—admin., off-site use only

7 Bldgs.
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200840065
Status: Excess
Directions: 12601, 12602, 12603, 12605, 12606, 12607, 12609
Comments: 2953 sq. ft. each, presence of asbestos, most recent use—barracks, off-site use only

9 Bldgs.
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200840066
Status: Excess
Directions: 12610, 12611, 12612, 12613, 12614, 12615, 12616, 12617, 12618
Comments: 2953 sq. ft., presence of asbestos, most recent use—barracks, off-site use only

Bldg. 12619
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200840067
Status: Excess
Comments: 3099 sq. ft. presence of asbestos, most recent use—barracks, off-site use only

Bldg. 12682
Fort Stewart
Hinesville GA 31314
Landholding Agency: Army
Property Number: 21200840068
Status: Excess
Comments: 120 sq. ft., presence of asbestos, most recent use—fuel/POL bldg., off-site use only

Hawaii

P–88
Aliamanu Military Reservation
Honolulu Co: Honolulu HI 96818
Landholding Agency: Army
Property Number: 21199030324
Status: Unutilized
Directions: Approximately 600 feet from Main Gate on Aliamanu Drive.
Comments: 45,216 sq. ft. underground tunnel complex, pres. of asbestos clean-up required of contamination, use of respirator required by those entering property, use limitations

Illinois

Bldg. 54
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299
Landholding Agency: Army
Property Number: 21199620666
Status: Unutilized
Comments: 2000 sq. ft., most recent use—oil storage, needs repair, off-site use only

Bldg. AR112
Sheridan Reserve
Arlington Heights IL 60052–2475
Landholding Agency: Army
Property Number: 21200110081
Status: Unutilized
Comments: 1000 sq. ft., off-site use only

Bldgs. 634, 639
Fort Sheridan
Ft. Sheridan IL 60037
Landholding Agency: Army
Property Number: 21200740186
Status: Unutilized
Comments: 3731/3706 sq. ft., most recent use—classroom/storage, off-site use only

Iowa

Bldg. 00691
Iowa Army Ammo Plant
Middletown Co: Des Moines IA 52638
Landholding Agency: Army
Property Number: 21200510073
Status: Unutilized
Comments: 2581 sq. ft. residence, presence of lead paint, possible asbestos

Bldg. 00691
Iowa Army Ammo Plant
Middletown Co: Des Moines IA 52638
Landholding Agency: Army
Property Number: 21200520113
Status: Unutilized
Comments: 2581 sq. ft., presence of asbestos/lead paint, most recent use—residential

Kansas

Bldgs. 7224, 7227, 7612, 7618
Fort Riley
Geary KS 66442
Landholding Agency: Army
Property Number: 21200930010
Status: Unutilized
Comments: 52,027/41,892 sq. ft., concrete block, most recent use—residential, off-site use only

Kentucky

Bldgs. 02660, 03706
Fort Campbell
Christian KY 42223
Landholding Agency: Army
Property Number: 21200830003
Status: Underutilized
Comments: 4000 sq. ft. each, off-site use only

Louisiana

Bldg. 8423, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459
Landholding Agency: Army
Property Number: 21199640528
Status: Underutilized
Comments: 4172 sq. ft., most recent use—barracks

Bldg. T7125
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200540088
Status: Unutilized
Comments: 1875 sq. ft., off-site use only

Bldgs. T7163, T8043
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200540089
Status: Unutilized
Comments: 4073/1923 sq. ft., off-site use only

Maryland

Bldg. 0459B
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120106
Status: Unutilized
Comments: 225 sq. ft., poor condition, most recent use—equipment bldg., off-site use only

Bldg. 00785
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120107

Status: Unutilized
Comments: 160 sq. ft., poor condition, most recent use—shelter, off-site use only

Bldg. E5239
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120113
Status: Unutilized
Comments: 230 sq. ft., most recent use—storage, off-site use only

Bldg. E5317
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120114
Status: Unutilized
Comments: 3158 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. E5637
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120115
Status: Unutilized
Comments: 312 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. 219
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 21200140078
Status: Unutilized
Comments: 8142 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 294
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 21200140081
Status: Unutilized
Comments: 3148 sq. ft., presence of asbestos/lead paint, most recent use—entomology facility, offsite use only

Bldg. 1007
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 21200140085
Status: Unutilized
Comments: 3108 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2214
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 21200230054
Status: Unutilized
Comments: 7740 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, offsite use only

Bldg. 00375
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200320107
Status: Unutilized
Comments: 64 sq. ft., most recent use—storage, off-site use only

Bldg. 0385A
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200320110
Status: Unutilized
Comments: 944 sq. ft., off-site use only

Bldg. 00523
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200320113
Status: Unutilized
Comments: 3897 sq. ft., most recent use—paint shop, off-site use only

Bldg. 0700B
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200320121
Status: Unutilized
Comments: 505 sq. ft., off-site use only

Bldg. 01113
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200320128
Status: Unutilized
Comments: 1012 sq. ft., off-site use only

Bldgs. 01124, 01132
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200320129
Status: Unutilized
Comments: 740/2448 sq. ft., most recent use—lab, off-site use only

Bldg. 03558
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200320133
Status: Unutilized
Comments: 18,000 sq. ft., most recent use—storage, off-site use only

Bldg. 05262
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200320136
Status: Unutilized
Comments: 864 sq. ft., most recent use—storage, off-site use only

Bldg. 05608
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200320137
Status: Unutilized
Comments: 1100 sq. ft., most recent use—maint bldg., off-site use only

Bldg. E5645
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200320150
Status: Unutilized
Comments: 548 sq. ft., most recent use—storage, off-site use only

Bldg. 00435
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330111
Status: Unutilized
Comments: 1191 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 0449A
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330112
Status: Unutilized
Comments: 143 sq. ft., needs rehab, most recent use—substation switch bldg., off-site use only

Bldg. 0460
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330114
Status: Unutilized
Comments: 1800 sq. ft., needs rehab, most recent use—electrical EQ bldg., off-site use only

Bldg. 00914
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330118
Status: Unutilized
Comments: needs rehab, most recent use—safety shelter, off-site use only

Bldg. 00915
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330119
Status: Unutilized
Comments: 247 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 01189
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330126
Status: Unutilized
Comments: 800 sq. ft., needs rehab, most recent use—range bldg., off-site use only

Bldg. E1413
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330127
Status: Unutilized
Comments: needs rehab, most recent use—observation tower, off-site use only

Bldg. E3175
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330134
Status: Unutilized
Comments: 1296 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only

4 Bldgs.
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330135
Status: Unutilized
Directions: E3224, E3228, E3230, E3232, E3234
Comments: sq. ft. varies, needs rehab, most recent use—lab test bldgs., off-site use only

Bldg. E3241
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army

Property Number: 21200330136
Status: Unutilized
Comments: 592 sq. ft., needs rehab, most recent use—medical res bldg., off-site use only

Bldg. E3300
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330139
Status: Unutilized
Comments: 44,352 sq. ft., needs rehab, most recent use—chemistry lab, off-site use only

Bldg. E3335
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330144
Status: Unutilized
Comments: 400 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldgs. E3360, E3362, E3464
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330145
Status: Unutilized
Comments: 3588/236 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E3542
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330148
Status: Unutilized
Comments: 1146 sq. ft., needs rehab, most recent use—lab test bldg., off-site use only

Bldg. E4420
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330151
Status: Unutilized
Comments: 14,997 sq. ft., needs rehab, most recent use—police bldg., off-site use only

4 Bldgs.
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330154
Status: Unutilized
Directions: E5005, E5049, E5050, E5051
Comments: sq. ft. varies, needs rehab, most recent use—storage, off-site use only

Bldg. E5068
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330155
Status: Unutilized
Comments: 1200 sq. ft., needs rehab, most recent use—fire station, off-site use only

Bldgs. 05448, 05449
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330161
Status: Unutilized
Comments: 6431 sq. ft., needs rehab, most recent use—enlisted UHP, off-site use only

Bldg. 05450
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330162
Status: Unutilized
Comments: 2730 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldgs. 05451, 05455
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330163
Status: Unutilized
Comments: 2730/6431 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 05453
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330164
Status: Unutilized
Comments: 6431 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. E5609
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330167
Status: Unutilized
Comments: 2053 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5611
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330168
Status: Unutilized
Comments: 11,242 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only

Bldg. E5634
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330169
Status: Unutilized
Comments: 200 sq. ft., needs rehab, most recent use—flammable storage, off-site use only

Bldg. E5654
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330171
Status: Unutilized
Comments: 21,532 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5942
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330176
Status: Unutilized
Comments: 2147 sq. ft., needs rehab, most recent use—igloo storage, off-site use only

Bldgs. E5952, E5953
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330177
Status: Unutilized
Comments: 100/24 sq. ft., needs rehab, most recent use—compressed air bldg., off-site use only

Bldgs. E7401, E7402
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330178
Status: Unutilized
Comments: 256/440 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E7407, E7408
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330179
Status: Unutilized
Comments: 1078/762 sq. ft., needs rehab, most recent use—decon facility, off-site use only

Bldg. 3070A
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200420055
Status: Unutilized
Comments: 2299 sq. ft., most recent use—heat plant, off-site use only

Bldg. E5026
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200420056
Status: Unutilized
Comments: 20,536 sq. ft., most recent use—storage, off-site use only

Bldg. 05261
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200420057
Status: Unutilized
Comments: 10,067 sq. ft., most recent use—maintenance, off-site use only

Bldg. E5876
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200440073
Status: Unutilized
Comments: 1192 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 00688
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200530080
Status: Unutilized
Comments: 24,192 sq. ft., most recent use—ammo, off-site use only

Bldg. 04925
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200540091
Status: Unutilized
Comments: 1326 sq. ft., off-site use only

Bldg. 00255
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720052
Status: Unutilized
Comments: 64 sq. ft., most recent use—storage, off-site use only

Bldg. 00638
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720053
Status: Unutilized

Comments: 4295 sq. ft., most recent use—storage, off-site use only

Bldg. 00721
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200720054
Status: Unutilized
Comments: 135 sq. ft., most recent use—storage, off-site use only

Bldgs. 00936, 00937
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720055
Status: Unutilized
Comments: 2000 sq. ft., most recent use—storage, off-site use only

Bldgs. E1410, E1434
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720056
Status: Unutilized
Comments: 2276/3106 sq. ft., most recent use—laboratory, off-site use only

Bldg. 03240
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720057
Status: Unutilized
Comments: 10,049 sq. ft., most recent use—office, off-site use only

Bldg. E3834
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720058
Status: Unutilized
Comments: 72 sq. ft., most recent use—office, off-site use only

Bldgs. E4465, E4470, E4480
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720059
Status: Unutilized
Comments: 17658/16876/17,655 sq. ft., most recent use—office, off-site use only

Bldgs. E5137, 05219
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720060
Status: Unutilized
Comments: 3700/8175 sq. ft., most recent use—office, off-site use only

Bldg. E5236
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720061
Status: Unutilized
Comments: 10,325 sq. ft., most recent use—storage, off-site use only

Bldg. E5282
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720062
Status: Unutilized
Comments: 4820 sq. ft., most recent use—hazard bldg., off-site use only

Bldgs. E5736, E5846, E5926
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720063
Status: Unutilized
Comments: 1069/4171/11279 sq. ft., most recent use—storage, off-site use only

Bldg. E6890
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200720064
Status: Unutilized
Comments: 1 sq. ft., most recent use—impact area, off-site use only

Bldg. 00310
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200820077
Status: Unutilized
Comments: 56516 sq. ft., most recent use—admin., off-site use only

Bldg. 00315
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820078
Status: Unutilized
Comments: 74396 sq. ft., most recent use—mach shop, off-site use only

Bldg. 00338
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820079
Status: Unutilized
Comments: 45443 sq. ft., most recent use—gnd tran eqp, off-site use only

Bldg. 00360
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820080
Status: Unutilized
Comments: 15287 sq. ft., most recent use—general inst., off-site use only

Bldg. 00445
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820081
Status: Unutilized
Comments: 6367 sq. ft., most recent use—lab, off-site use only

Bldg. 00851
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820082
Status: Unutilized
Comments: 694 sq. ft., most recent use—range bldg., off-site use only

E1043
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820083
Status: Unutilized
Comments: 5200 sq. ft., most recent use—lab, off-site use only

Bldg. 01089
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820084
Status: Unutilized
Comments: 12369 sq. ft., most recent use—veh maint, off-site use only

Bldg. 01091
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820085
Status: Unutilized
Comments: 2201 sq. ft., most recent use—storage, off-site use only

Bldg. E1386
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820086
Status: Unutilized
Comments: 251 sq. ft., most recent use—eng/mnt, off-site use only

5 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820087
Status: Unutilized
Directions: E1440, E1441, E1443, E1445, E1455
Comments: 112 sq. ft., most recent use—safety shelter, off-site use only

Bldgs. E1467, E1485
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820088
Status: Unutilized
Comments: 160/800 sq. ft., most recent use—storage, off-site use only

Bldg. E1521
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820090
Status: Unutilized
Comments: 1200 sq. ft., most recent use—overhead protection, off-site use only

Bldg. E1570
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820091
Status: Unutilized
Comments: 47027 sq. ft., most recent use—office, off-site use only

Bldg. E1572
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820092
Status: Unutilized
Comments: 1402 sq. ft., most recent use—maint., off-site use only

4 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820093
Status: Unutilized
Directions: E1645, E1675, E1677, E1930
Comments: various sq. ft., most recent use—office, off-site use only

Bldgs. E2160, E2184, E2196
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820094
Status: Unutilized
Comments: 12440/13816 sq. ft., most recent use—storage, off-site use only

Bldg. E2174
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820095
Status: Unutilized
Comments: 132 sq. ft., off-site use only

Bldgs. 02208, 02209
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820096
Status: Unutilized
Comments: 11566/18085 sq. ft., most recent use—lodging, off-site use only

Bldg. 02353
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820097
Status: Unutilized
Comments: 19252 sq. ft., most recent use—veh maint, off-site use only

Bldgs. 02482, 02484
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820098
Status: Unutilized
Comments: 8359 sq. ft., most recent use—gen purp, off-site use only

Bldg. 02483
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820099
Status: Unutilized
Comments: 1360 sq. ft., most recent use—heat plt, off-site use only

Bldgs. 02504, 02505
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820100
Status: Unutilized
Comments: 11720/17434 sq. ft., most recent use—lodging, off-site use only

Bldgs. 02831, E3488
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820101
Status: Unutilized
Comments: 576/64 sq. ft., most recent use—access cnt fac, off-site use only

Bldg. 2831A
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820102
Status: Unutilized
Comments: 1200 sq. ft., most recent use—overhead protection, off-site use only

Bldg. 03320
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820103
Status: Unutilized
Comments: 10600 sq. ft., most recent use—admin, off-site use only

Bldg. E3466
Aberdeen Proving Ground
Aberdeen MD
Landholding Agency: Army
Property Number: 21200820104
Status: Unutilized
Comments: 236 sq. ft., most recent use—protective barrier, off-site use only

4 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820105
Status: Unutilized
Directions: E3510, E3570, E3640, E3832
Comments: various sq. ft., most recent use—lab, off-site use only

Bldg. E3544
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820106
Status: Unutilized
Comments: 5400 sq. ft., most recent use—ind waste, off-site use only

Bldgs. E3561, 03751
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820107
Status: Unutilized
Comments: 64/189 sq. ft., most recent use—access cnt fac, off-site use only

Bldg. 03754
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820108
Status: Unutilized
Comments: 324 sq. ft., most recent use—classroom, off-site use only

Bldg. 3823A
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820109
Status: Unutilized
Comments: 113 sq. ft., most recent use—shed, off-site use only

Bldg. E3948
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820110
Status: Unutilized
Comments: 3420 sq. ft., most recent use—emp chg fac, off-site use only

4 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820111
Status: Unutilized
Directions: E5057, E5058, E5246, 05258
Comments: various sq. ft., most recent use—storage, off-site use only

Bldgs. E5106, 05256
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820112
Status: Unutilized
Comments: 18621/8720 sq. ft., most recent use—office, off-site use only

Bldg. E5126
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820113
Status: Unutilized
Comments: 17664 sq. ft., most recent use—heat plt, off-site use only

Bldg. E5128
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820114
Status: Unutilized
Comments: 3750 sq. ft., most recent use—substation, off-site use only

Bldg. E5188
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820115
Status: Unutilized
Comments: 22790 sq. ft., most recent use—lab, off-site use only

Bldg. E5179
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820116
Status: Unutilized
Comments: 47335 sq. ft., most recent use—info sys, off-site use only

Bldg. E5190
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820117
Status: Unutilized
Comments: 874 sq. ft., most recent use—storage, off-site use only

Bldg. 05223
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820118
Status: Unutilized
Comments: 6854 sq. ft., most recent use—gen rep inst, off-site use only

Bldgs. 05259, 05260
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820119
Status: Unutilized
Comments: 10067 sq. ft., most recent use—maint, off-site use only

Bldgs. 05263, 05264
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820120
Status: Unutilized
Comments: 200 sq. ft., most recent use—org space, off-site use only

5 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820121

Status: Unutilized
Directions: 05267, E5294, E5327, E5441, E5485
Comments: various sq. ft., most recent use—storage, off-site use only

Bldg. E5292
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820122
Status: Unutilized
Comments: 1166 sq. ft., most recent use—comp rep inst, off-site use only

Bldg. E5380
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820123
Status: Unutilized
Comments: 9176 sq. ft., most recent use—lab, off-site use only

Bldg. E5452
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820124
Status: Unutilized
Comments: 9623 sq. ft., off-site use only

Bldg. 05654
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820125
Status: Unutilized
Comments: 38 sq. ft. most recent use—shed, off-site use only

Bldg. 05656
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820126
Status: Unutilized
Comments: 2240 sq. ft., most recent use—overhead protection off-site use only

5 Bldgs.
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820127
Status: Unutilized
Directions: E5730, E5738, E5915, E5928, E6875
Comments: various sq. ft., most recent use—storage, off-site use only

Bldg. E5770
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820128
Status: Unutilized
Comments: 174 sq. ft., most recent use—cent wash, off-site use only

Bldg. E5840
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820129
Status: Unutilized
Comments: 14200 sq. ft., most recent use—lab, off-site use only

Bldg. E5946
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820130
Status: Unutilized
Comments: 2147 sq. ft., most recent use—igloo str, off-site use only

Bldg. E6872
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820131
Status: Unutilized
Comments: 1380 sq. ft., most recent use—dispatch, off-site use only

Bldgs. E7331, E7332, E7333
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820132
Status: Unutilized
Comments: most recent use—protective barrier, off-site use only

Bldg. E7821
Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820133
Status: Unutilized
Comments: 3500 sq. ft., most recent use—xmitter bldg, off-site use only

Bldg. 02483
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200920025
Status: Unutilized
Comments: 1360 sq. ft., most recent use—heat plt bldg., off-site use only

Bldg. 03320
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200920026
Status: Unutilized
Comments: 10,600 sq. ft., most recent use—admin., off-site use only

Missouri

Bldg. T1497
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420441
Status: Underutilized
Comments: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2139
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420446
Status: Underutilized
Comments: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2385
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 21199510115
Status: Excess
Comments: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. 2167
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820179
Status: Unutilized
Comments: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. 2192, 2196, 2198
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820183
Status: Unutilized
Comments: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

12 Bldgs.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410110
Status: Unutilized
Directions: 07036,07050,07054,07102,07400, 07401,08245,08249 08251,08255,08257, 08261.
Comments: 7152 sq. ft. 6 plex housing quarters, potential contaminants, off-site use only.

6 Bldgs.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410111
Status: Unutilized
Directions: 07044,07106,07107,08260,08281, 08300
Comments: 9520 sq ft., 8 plex housing quarters, potential contaminants, off-site use only.

15 Bldgs.
Fort Leaonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410112
Status: Unutilized
Directions: 08242,08243,08246–08248, 08250,08252–08254,08256, 08258–08259, 08262–08263,08265
Comments: 4784 sq ft., 4 plex housing quarters, potential contaminants, off-site use only.

Bldgs. 08283, 08285
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410113
Status: Unutilized
Comments: 2240 sq ft, 2 plex housing quarters, potential contaminants, off-site use only

15 Bldgs.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–0827
Landholding Agency: Army
Property Number: 21200410114
Status: Unutilized

Directions: 08267,08269,08271, 08273,08275,08277,08279,08290 08296,08301
Comments: 4784 sq ft., 4 plex housing quarters, potential contaminants, off-site use only

Bldg. 09432
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410115
Status: Unutilized
Comments: 8724 sq ft., 6-plex housing quarters, potential contaminants, off-site use only.

Bldgs. 5006 and 5013
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200430064
Status: Unutilized
Comments: 192 sq. ft., needs repair, most recent use—generator bldg., off-site use only

Bldgs. 13210, 13710
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200430065
Status: Unutilized
Comments: 144 sq. ft. each, needs repair, most recent use—communication, off-site use only

Montana

Bldg. 00405 Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Landholding Agency: Army
Property Number: 21200130099
Status: Unutilized
Comments: 3467 sq. ft., most recent use—storage, security limitations

Bldg. T0066
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Landholding Agency: Army
Property Number: 21200130100
Status: Unutilized
Comments: 528 sq. ft., needs rehab, presence of asbestos, security limitations

Bldg. 00001
Sheridan Hall USARC
Helena MT 59601
Landholding Agency: Army
Property Number: 21200540093
Status: Unutilized
Comments: 19,321 sq. ft., most recent use—Reserve Center

Bldg. 00003
Sheridan Hall USARC
Helena MT 59601
Landholding Agency: Army
Property Number: 21200540094
Status: Unutilized
Comments: 1950 sq. ft., most recent use—maintenance/storage

New Jersey

Bldg. 732
Armament R Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740315
Status: Unutilized
Comments: 9077 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 816C
Armament R, D, Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21200130103
Status: Unutilized
Comments: 144 sq. ft., most recent use—storage, off-site use only

New Mexico

Bldg. 34198
White Sands Missile Range
Dona Ana NM 88002
Landholding Agency: Army
Property Number: 21200230062
Status: Excess
Comments: 107 sq. ft., most recent use—security, off-site use only

New York

Bldg. 1227
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 21200440074
Status: Unutilized
Comments: 3800 sq. ft., needs repair, possible asbestos/lead paint, most recent use—maintenance, off-site use only

Bldg. 2218
Stewart Newburg USARC
New Windsor Co: Orange NY 12553–9000
Landholding Agency: Army
Property Number: 21200510067
Status: Unutilized
Comments: 32,000 sq. ft., poor condition, requires major repairs, most recent use—storage/services

7 Bldgs.
Stewart Newburg USARC
New Windsor Co: Orange NY 12553–9000
Landholding Agency: Army
Property Number: 21200510068
Status: Unutilized
Directions: 2122, 2124, 2126, 2128, 2106, 2108, 2104
Comments: sq. ft. varies, poor condition, needs major repairs, most recent use—storage/services

Oklahoma

Bldg. T–838, Fort Sill
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199220609
Status: Unutilized
Comments: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).

Bldg. T–954, Fort Sill
954 Quinette Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240659
Status: Unutilized
Comments: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop.

Bldg. T–3325, Fort Sill
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240681
Status: Unutilized
Comments: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse.

Bldg. T–4226
Fort Sill
Lawton Co: Comanche OK 73503
Landholding Agency: Army
Property Number: 21199440384
Status: Unutilized
Comments: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Bldg. P–1015, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 21199520197
Status: Unutilized
Comments: 15402 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. P–366, Fort Sill
Lawton Co: Comanche OK 73503
Landholding Agency: Army Property Number: 21199610740
Status: Unutilized
Comments: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only

Building P–5042
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710066
Status: Unutilized
Comments: 119 sq. ft., possible asbestos and leadpaint, most recent use—heatplant, off-site use only

4 Buildings
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710086
Status: Unutilized
Directions: T–6465, T–6466, T–6467, T–6468
Comments: various sq. ft., possible asbestos and leadpaint, most recent use—range support, off site use only

Bldg. T–810
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730350
Status: Unutilized
Comments: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only

Bldgs. T–837, T–839
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730351
Status: Unutilized
Comments: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, offsite use only

Bldg. P–934
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730353
Status: Unutilized

Comments: 402 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–1468, T–1469
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730357
Status: Unutilized
Comments: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1470
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730358
Status: Unutilized
Comments: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–1954, T–2022
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730362
Status: Unutilized
Comments: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, offsite use only

Bldg. T–2184
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730364
Status: Unutilized
Comments: 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2186, T–2188, T–2189
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730366
Status: Unutilized
Comments: 1656–3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. T–2187
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730367
Status: Unutilized
Comments: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2291 thru T–2296
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730372
Status: Unutilized
Comments: 400 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–3001, T–3006
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730383
Status: Unutilized
Comments: approx. 9300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–3314
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730385
Status: Unutilized
Comments: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–5041
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730409
Status: Unutilized
Comments: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–5420
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730414
Status: Unutilized
Comments: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only

Bldg. T–7775
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730419
Status: Unutilized
Comments: 1452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only

4 Bldgs.
Fort Sill
P–617, P–1114, P–1386, P–1608
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910133
Status: Unutilized
Comments: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only

Bldg. P–746
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910135
Status: Unutilized
Comments: 6299 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. P–2582
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910141
Status: Unutilized
Comments: 3672 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. P–2914
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910146
Status: Unutilized
Comments: 1236 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–5101
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910153
Status: Unutilized
Comments: 82 sq. ft., possible asbestos/lead paint, most recent use—gas station, off-site use only

Bldg. S–6430
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910156
Status: Unutilized
Comments: 2080 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6461
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910157
Status: Unutilized
Comments: 200 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6462
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910158
Status: Unutilized
Comments: 64 sq. ft., possible asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. P–7230
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910159
Status: Unutilized
Comments: 160 sq. ft., possible asbestos/lead paint, most recent use—transmitter bldg., off-site use only

Bldg. S–4023
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200010128
Status: Unutilized
Comments: 1200 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–747
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120120
Status: Unutilized
Comments: 9232 sq. ft., possible asbestos/lead paint, most recent use—lab, off-site use only

Bldg. P–842
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120123
Status: Unutilized
Comments: 192 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–911
Fort Sill
Lawton Co: Comanche OK 73503–5100

Landholding Agency: Army
Property Number: 21200120124
Status: Unutilized
Comments: 3080 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–1672
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120126
Status: Unutilized
Comments: 1056 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. S–2362
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120127
Status: Unutilized
Comments: 64 sq. ft., possible asbestos/lead paint, most recent use—gatehouse, off-site use only

Bldg. P–2589
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120129
Status: Unutilized
Comments: 3672 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. 00937, 00957
Fort Sill
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200710104
Status: Unutilized
Comments: 1558 sq. ft., most recent use—storage shed, off-site use only

Bldg. 01514
Fort Sill
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200710105
Status: Unutilized
Comments: 1602 sq. ft., most recent use—storage, off-site use only

Bldg. 05685
Fort Sill
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200820152
Status: Unutilized
Comments: 24,072 sq. ft., concrete block/w brick, off-site use only

Bldg. 07480
Fort Sill
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200920002
Status: Unutilized
Comments: 1200 sq. ft., most recent use—recreation, off-site use only

Bldgs. 01509, 01510
Fort Sill
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200920060
Status: Unutilized
Comments: various sq. ft., most recent use—vehicle maint. shop, off-site use only

4 Bldgs.
Fort Sill
2591, 2593, 2595, 2604
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200920061
Status: Unutilized
Comments: various sq. ft., most recent use—classroom/admin, off-site use only

Bldg. 06456
Fort Sill
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200930003
Status: Unutilized
Comments: 413 sq. ft. range support facility, off-site use only

South Dakota

Bldg. 03001
Jonas H. Lien AFRC
Sioux Falls SD 57104
Landholding Agency: Army
Property Number: 21200740187
Status: Unutilized
Comments: 33282 sq. ft., most recent use—training center

Bldg. 03003
Jonas H. Lien AFRC
Sioux Falls SD 57104
Landholding Agency: Army
Property Number: 21200740188
Status: Unutilized
Comments: 4675 sq. ft., most recent use—vehicle maint. shop

Tennessee

Bldg. Trail
Fort Campbell
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920010 Status: Excess
Comments: 2104 sq. ft., double-wide trailer, off-site use only

Bldg. 00001
Fort Campbell
Christian TN 42223
Landholding Agency: Army
Property Number: 21200920027
Status: Unutilized
Comments: double wide trailer, off-site use only

Texas

Bldg. 7137, Fort Bliss
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Number: 21199640564
Status: Unutilized
Comments: 35,736 sq. ft., 3-story, most recent use—housing, off-site use only

Bldg. 92043
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200020206
Status: Unutilized
Comments: 450 sq. ft., most recent use—storage, off-site use only

Bldg. 92044
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200020207
Status: Unutilized
Comments: 1920 sq. ft., most recent use—admin., off-site use only

Bldg. 92045
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200020208
Status: Unutilized
Comments: 2108 sq. ft., most recent use—maint., off-site use only

Bldg. 56305
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220143
Status: Unutilized
Comments: 2160 sq. ft., most recent use—admin., off-site use only

Bldgs. 56620, 56621
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220146
Status: Unutilized
Comments: 1120 sq. ft., most recent use—shower, off-site use only

Bldgs. 56626, 56627
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220147
Status: Unutilized
Comments: 1120 sq. ft., most recent use—shower, off-site use only

Bldg. 56628
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220148
Status: Unutilized
Comments: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. 56636, 56637 Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220150
Status: Unutilized
Comments: 1120 sq. ft., most recent use—shower, off-site use only

Bldg. 56638
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220151
Status: Unutilized
Comments: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. 56703, 56708
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220152
Status: Unutilized
Comments: 1306 sq. ft., most recent use—shower, off-site use only

Bldg. 56758
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220154
Status: Unutilized
Comments: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. P6220, P6222

Fort Sam Houston
Camp Bullis
San Antonio Co: Bexar TX
Landholding Agency: Army
Property Number: 21200330197
Status: Unutilized
Comments: 384 sq. ft., most recent use—carport/storage, off-site use only

Bldgs. P6224, P6226
Fort Sam Houston
Camp Bullis
San Antonio Co: Bexar TX
Landholding Agency: Army
Property Number: 21200330198
Status: Unutilized
Comments: 384 sq. ft., most recent use—carport/storage, off-site use only

Bldg. 92039
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200640101
Status: Excess
Comments: 80 sq. ft., most recent use—storage, off-site use only

Bldgs. 04281, 04283
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720085
Status: Excess
Comments: 4000/8020 sq. ft., most recent use—storage shed, off-site use only

Bldg. 04284
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720086
Status: Excess
Comments: 800 sq. ft., presence of asbestos, most recent use—storage shed, off-site use only

Bldg. 04285
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720087
Status: Excess
Comments: 8000 sq. ft., most recent use—storage shed, off-site use only

Bldg. 04286
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720088
Status: Excess
Comments: 36,000 sq. ft., presence of asbestos, most recent use—storage shed, off-site use only

Bldg. 04291
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720089
Status: Excess
Comments: 6400 sq. ft., presence of asbestos, most recent use—storage shed, off-site use only

Bldg. 4410
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720090
Status: Excess
Comments: 12,956 sq. ft., presence of asbestos, most recent use—simulation center, off-site use only

Bldgs. 10031, 10032, 10033
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720091
Status: Excess
Comments: 2578/3383 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldgs. 56524, 56532
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720092
Status: Excess
Comments: 600 sq. ft., presence of asbestos, most recent use—dining, off-site use only

Bldg. 56435
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720093
Status: Excess
Comments: 3441 sq. ft., presence of asbestos, most recent use—barracks, off-site use only

Bldg. 05708
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720094
Status: Excess
Comments: 1344 sq. ft., most recent use—community center, off-site use only

Bldg. 90001
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720095
Status: Excess
Comments: 3574 sq. ft., presence of asbestos, most recent use—transmitter bldg., off-site use only

Bldg. 93013
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200720099
Status: Excess
Comments: 800 sq. ft., most recent use—club, off-site use only

5 Bldgs.
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740195
Status: Excess
Directions: 56541, 56546, 56547, 56548, 56638
Comments: 1120/1133 sq. ft., presence of asbestos, most recent use—lavatory, off-site use only

4 Bldgs.
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810048
Status: Unutilized
Directions: 00229, 00230, 00231, 00232
Comments: various sq. ft., presence of asbestos, most recent use—training aids center, off-site use only

Bldg. 00324
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810049
Status: Unutilized
Comments: 13,319 sq. ft., most recent use—roller skating rink, off-site use only

Bldgs. 00710, 00739, 00741
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810050
Status: Unutilized
Comments: various sq. ft., presence of asbestos, most recent use—repair shop, off-site use only

5 Bldgs.
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810051
Status: Unutilized
Directions: 00711, 00712, 02219, 02612, 05780
Comments: various sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 00713
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810052
Status: Unutilized
Comments: 3200 sq. ft., presence of asbestos, most recent use—hdqts. bldg., off-site use only

Bldgs. 1938, 04229
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810053
Status: Unutilized
Comments: 2736/9000 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldgs. 02218, 02220
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810054
Status: Unutilized
Comments: 7289/1456 sq. ft., presence of asbestos, most recent use—museum, off-site use only

Bldg. 0350
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810055
Status: Unutilized
Comments: 28,290 sq. ft., presence of asbestos, most recent use—veh. maint. shop, off-site use only

Bldg. 04449
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200810056
Status: Unutilized
Comments: 3822 sq. ft., most recent use—police station, off-site use only

Bldg. 91077
Fort Hood

Bell TX 76544
Landholding Agency: Army
Property Number: 21200810057
Status: Unutilized
Comments: 3200 sq. ft., presence of asbestos, most recent use—educational facility, off-site use only

Bldg. 1610
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21200810059
Status: Excess
Comments: 11056 sq. ft., concrete/stucco, most recent use—gas station/store, off-site use only

Bldg. 1680
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21200810060
Status: Excess
Comments: 3690 sq. ft., concrete/stucco, most recent use—restaurant, off-site use only

12 Bldgs.
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200820153
Status: Excess
Directions: 56522, 56523, 56525, 56533, 56534, 56535, 56539, 56542, 56543, 56544, 56545, 56549
Comments: 600/607 sq. ft., presence of asbestos, most recent use—dining, off-site use only

10 Bldgs.
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200820154
Status: Excess
Directions: 56622, 56623, 56624, 56625, 56629, 56632, 56633, 56634, 56635, 56639
Comments: 500/507 sq. ft., presence of asbestos, most recent use—dining, off-site use only

6 Bldgs.
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200840070
Status: Excess
Directions: 56412, 57023, 57024, 57025, 57009, 57010
Comments: presence of asbestos, most recent use—storage, off-site use only

9 Bldgs.
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200840071
Status: Excess
Directions: 56529, 56618, 56702, 56710, 56752, 56753, 56754, 56755, 56759
Comments: presence of asbestos, most recent use—dining facility, off-site use only

Bldg. 56703
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200840072
Status: Excess
Comments: 1306 sq. ft., presence of asbestos, most recent use—shower, off-site use only

Bldg. 57005
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200840073
Status: Excess
Comments: 500 sq. ft., presence of asbestos, most recent use—water supply/treatment, off-site use only

Utah

Bldg. 00001
Borgstrom Hall USARC
Ogden UT 84401
Landholding Agency: Army
Property Number: 21200740196
Status: Excess
Comments: 16543 sq. ft., most recent use—training center, off-site use only

Bldg. 00002
Borgstrom Hall USARC
Ogden UT 84401
Landholding Agency: Army
Property Number: 21200740197
Status: Excess
Comments: 3842 sq. ft., most recent use—vehicle maint. shop, off-site use only

Bldg. 00005
Borgstrom Hall USARC
Ogden UT 84401
Landholding Agency: Army
Property Number: 21200740198
Status: Excess
Comments: 96 sq. ft., most recent use—storage, off-site use only

Virginia

Bldg. 1559
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200130156
Status: Unutilized
Comments: 2892 sq. ft., most recent use—storage, off-site use only

Fort Story
Ft. Story VA 23459
Landholding Agency: Army
Property Number: 21200720065
Status: Unutilized
Comments: 525 sq. ft., most recent use—power plant, off-site use only

Bldg. 00942
Fort Story
Ft. Story VA 23459
Landholding Agency: Army
Property Number: 21200720066
Status: Unutilized
Comments: 84 sq ft., most recent use—shower, off-site use only

Bldg. 01025
Fort Story
Ft. Story VA 23459
Landholding Agency: Army
Property Number: 21200720070
Status: Unutilized
Comments: 4800 sq. ft., most recent use—admin., off-site use only

Bldg. 01028
Fort Story
Ft. Story VA 23459
Landholding Agency: Army
Property Number: 21200720071
Status: Unutilized
Comments: 2398 sq. ft., most recent use—admin., off-site use only

Bldg. 01633
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720076
Status: Unutilized
Comments: 240 sq. ft., most recent use—storage, off-site use only

Bldg. 02786
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720084
Status: Unutilized
Comments: 1596 sq. ft., most recent use—admin., off-site use only

Bldg. P0838
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200830005
Status: Unutilized
Comments: 576 sq. ft., most recent use—rec shelter, off-site use only

Washington

Bldg. CO909, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630205
Status: Unutilized
Comments: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1164, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630213
Status: Unutilized
Comments: 230 sq. ft., possible asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 1307, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630216
Status: Unutilized
Comments: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1309, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630217
Status: Unutilized
Comments: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2167, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630218
Status: Unutilized
Comments: 288 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 4078, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630219
Status: Unutilized
Comments: 10200 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 9599, Fort Lewis

Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630220
Status: Unutilized
Comments: 12366 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. A1404, Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army Property Number: 21199640570
Status: Unutilized
Comments: 557 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. EO347
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199710156
Status: Unutilized
Comments: 1800 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. B1008, Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199720216
Status: Unutilized
Comments: 7387 sq. ft., 2-story, needs rehab, possible asbestos/lead paint, most recent use—medical clinic, off-site use only

Bldgs. CO509, CO709, CO720
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199810372
Status: Unutilized
Comments: 1984 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—storage, offsite use only

Bldg. 5162
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199830419
Status: Unutilized
Comments: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, offsite use only

Bldg. 5224
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199830433
Status: Unutilized
Comments: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—educ. fac., off-site use only

Bldg. U001B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920237
Status: Excess
Comments: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U001C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920238
Status: Unutilized
Comments: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, offsite use only

10 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920239
Status: Excess
Directions: U002B, U002C, U005C, U015I, U016E, U019C, U022A, U028B, 0091A, U093C
Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920240
Status: Unutilized
Directions: U003A, U004B, U006C, U015B, U016B, U019B
Comments: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U004D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920241
Status: Unutilized
Comments: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, offsite use only

Bldg. U005A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920242
Status: Unutilized
Comments: 360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920245
Status: Excess
Directions: U014A, U022B, U023A, U043B, U059B, U060A, U101A
Comments: needs repair, presence of asbestos/lead paint, most recent use—ofc/tower/support, offsite use only

Bldg. U015J
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920246
Status: Excess
Comments: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, offsite use only

Bldg. U018B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920247
Status: Unutilized
Comments: 121 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U018C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920248
Status: Unutilized
Comments: 48 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U024D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920250
Status: Unutilized
Comments: 120 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—ammo bldg., off-site use only

Bldg. U027A
Fort Lewis
Ft. Lewis Co: Pierce WA
Landholding Agency: Army
Property Number: 21199920251
Status: Excess
Comments: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tire house, off-site use only

Bldg. U031A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920253
Status: Excess
Comments: 3456 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only

Bldg. U031C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920254
Status: Unutilized
Comments: 32 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U040D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920255
Status: Excess
Comments: 800 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U052C, U052H
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920256
Status: Excess
Comments: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U035A, U035B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920257
Status: Excess
Comments: 192 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, offsite use only

Bldg. U035C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920258

Status: Excess
Comments: 242 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U039A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920259
Status: Excess
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U039B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920260
Status: Excess
Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—grandstand/bleachers, off-site use only

Bldg. U039C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920261
Status: Excess
Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. U043A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920262
Status: Excess
Comments: 132 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U052A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920263
Status: Excess
Comments: 69 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, offsite use only

Bldg. U052E
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920264
Status: Excess
Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. U052G
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920265
Status: Excess
Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

3 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920266
Status: Excess
Directions: U058A, U103A, U018A
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U059A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920267
Status: Excess
Comments: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, offsite use only

Bldg. U093B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920268
Status: Excess
Comments: 680 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

4 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920269
Status: Excess
Directions: U101B, U101C, U507B, U557A
Comments: 400 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U110B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920272
Status: Excess
Comments: 138 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920273
Status: Excess
Directions: U111A, U015A, U024E, U052F, U109A, U110A
Comments: 1000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support/shelter/mess, off-site use only

Bldg. U112A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920274
Status: Excess
Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U115A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920275
Status: Excess
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, offsite use only

Bldg. U507A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920276
Status: Excess
Comments: 400 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. C0120
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920281
Status: Excess
Comments: 384 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—scale house, off-site use only

Bldg. 01205
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920290
Status: Excess
Comments: 87 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 01259
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920291
Status: Excess
Comments: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, offsite use only

Bldg. 01266
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920292
Status: Excess
Comments: 45 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, offsite use only

Bldg. 1445
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920294
Status: Excess
Comments: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—generator bldg., off-site use only

Bldgs. 03091, 03099
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920296
Status: Excess
Comments: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 4040
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920298
Status: Excess
Comments: 8326 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, offsite use only

Bldgs. 4072, 5104
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920299
Status: Excess

Comments: 24/36 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 4295
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920300
Status: Excess
Comments: 48 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, offsite use only

Bldg. 6191 Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920303
Status: Excess
Comments: 3663 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—exchange branch, off-site use only

Bldgs. 08076, 08080
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920304
Status: Excess
Comments: 3660/412 sq .ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 08093
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920305
Status: Excess
Comments: 289 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—boat storage, off-site use only

Bldg. 8279
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920306
Status: Excess
Comments: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—fuel disp. fac., off-site use only

Bldgs. 8280, 8291
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920307
Status: Excess
Comments: 800/464 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 8956
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920308
Status: Excess
Comments: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 9530
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920309
Status: Excess
Comments: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 9574
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920310
Status: Excess
Comments: 6005 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. shop., off-site use only

Bldg. 9596
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920311
Status: Excess
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only

Land

Maryland

2 acres
Fort Meade
Odenton Rd/Rt 175
Ft. Meade MD 20755
Landholding Agency: Army
Property Number: 21200640095
Status: Unutilized
Comments: light industrial

16 acres
Fort Meade
Rt 198/Airport Road
Ft. Meade MD 20755
Landholding Agency: Army
Property Number: 21200640096
Status: Unutilized
Comments: light industrial

Ohio

Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200340094
Status: Excess
Comments: 11 acres, railroad access

Tennessee

Parcel No. 1
Fort Campbell
Tract No. 13M–3
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920003
Status: Excess
Comments: 6.89 acres/thick vegetation

Parcel No. 2
Fort Campbell
Tract Nos.12M–16B & 13M–3
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920004
Status: Excess
Comments: 3.41 acres/wooded

Parcel No. 3
Fort Campbell
Tract No. 12M–4
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920005
Status: Excess
Comments: 6.56 acre/wooded

Parcel No. 4
Fort Campbell
Tract Nos10M–22 &10M–23
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920006
Status: Excess
Comments: 5.73 acres/wooded

Parcel No. 5
Fort Campbell
Tract No. 10M–20
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920007
Status: Excess
Comments: 3.86 acres/wooded

Parcel No. 7
Fort Campbell
Tract No. 10M–10
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920008
Status: Excess
Comments: 9.47 acres/wooded

Parcel No. 8
Fort Campbell
Tract No. 8M–7
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200920009
Status: Excess
Comments: 15.13 acres/wooded

Texas

1 acre
Fort Sam Houston
San Antonio Co: Bexar TX 78234
Landholding Agency: Army
Property Number: 21200440075
Status: Excess
Comments: 1 acre, grassy area

Alabama

Bldg. 01433
Fort Rucker
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 21200220098
Status: Excess
Comments: 800 sq. ft., most recent use—office, off-site use only

Bldg. 30105
Fort Rucker
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 21200510052
Status: Excess
Comments: 4100 sq. ft., most recent use—admin., off-site use only

Bldg. 40115
Fort Rucker
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 21200510053
Status: Excess
Comments: 34,520 sq. ft., most recent use—storage, off-site use only

Bldg. 25303
Fort Rucker
Dale AL 36362
Landholding Agency: Army
Property Number: 21200520074
Status: Excess
Comments: 800 sq. ft., most recent use—airfield operations, off-site use only

Bldg. 25304
Fort Rucker
Dale AL 36362
Landholding Agency: Army

Property Number: 21200520075
Status: Excess
Comments: 1200 sq. ft., poor condition, most recent use—fire station, off-site use only

Arizona

Bldg. 22529
Fort Huachuca
Cochise AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520077
Status: Excess
Comments: 2543 sq. ft., most recent use—storage, off-site use only

Bldg. 22541
Fort Huachuca
Cochise AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520078
Status: Excess
Comments: 1300 sq. ft., most recent use—storage, off-site use only

Bldg. 30020
Fort Huachuca
Cochise AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520079
Status: Excess
Comments: 1305 sq. ft., most recent use—storage, off-site use only

Bldg. 30021
Fort Huachuca
Cochise AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520080
Status: Excess
Comments: 144 sq. ft., most recent use—storage, off-site use only

Bldg. 22040
Fort Huachuca
Cochise AZ 85613
Landholding Agency: Army
Property Number: 21200540076
Status: Excess
Comments: 1131 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 22540
Fort Huachuca
Cochise AZ 85613–7010
Landholding Agency: Army
Property Number: 21200620067
Status: Excess
Comments: 958 sq. ft., most recent use—storage, off-site use only

Colorado

Bldg. S6264
Fort Carson
Ft. Carson Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 21200340084
Status: Unutilized
Comments: 19,499 sq. ft., most recent use—office, off-site use only

Bldg. S6285
Fort Carson
Ft. Carson Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 21200420176
Status: Unutilized
Comments: 19,478 sq. ft., most recent use—admin., off-site use only

Bldg. S6287
Fort Carson
Ft. Carson Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 21200420177
Status: Unutilized
Comments: 10,076 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 06225
Fort Carson
El Paso CO 80913–4001
Landholding Agency: Army
Property Number: 21200520084
Status: Unutilized
Comments: 24,263 sq. ft., most recent use—admin., off-site use only

Georgia

Bldg. T201
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420002
Status: Excess
Comments: 1828 sq. ft., most recent use—credit union, off-site use only

Bldg. T234
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420008
Status: Excess
Comments: 2624 sq. ft., most recent use—admin., off-site use only

Bldg. T702
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420010
Status: Excess
Comments: 9190 sq. ft., most recent use—storage, off-site use only

Bldg. T703
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420011
Status: Excess
Comments: 9190 sq. ft., most recent use—storage, off-site use only

Bldg. T704
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420012
Status: Excess
Comments: 9190 sq. ft., most recent use—storage, off-site use only

Bldg. P813
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420013
Status: Excess
Comments: 43,055 sq. ft., most recent use—maint. hanger/Co Hq., off-site use only

Bldgs. S843, S844, S845
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420014
Status: Excess
Comments: 9383 sq. ft., most recent use—maint hanger, off-site use only

Bldg. P925
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420015
Status: Excess
Comments: 27,681 sq. ft., most recent use—fitness center, off-site use only

Bldg. P1277
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420024
Status: Excess
Comments: 13,981 sq. ft., most recent use—barracks/dining, off-site use only

Bldg. T1412
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420025
Status: Excess
Comments: 9186 sq. ft., most recent use—warehouse, off-site use only

Bldg. 8658
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420029
Status: Excess
Comments: 8470 sq. ft., most recent use—storage, off-site use only

Bldg. 8659
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420030
Status: Excess
Comments: 8470 sq. ft., most recent use—storage, off-site use only

Bldgs. 8675, 8676
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200420031
Status: Excess
Comments: 4000 sq. ft., most recent use—ship/recv facility, off-site use only

Bldg. 5978
Fort Benning
Ft. Benning Co: Chattahoochee GA 31905
Landholding Agency: Army
Property Number: 21200420038
Status: Excess
Comments: 1344 sq. ft., most recent use—igloo storage, off-site use only

Bldg. 5993
Fort Benning
Ft. Benning Co: Chattahoochee GA 31905
Landholding Agency: Army
Property Number: 21200420041
Status: Excess
Comments: 960 sq. ft., most recent use—storage, off-site use only

Bldg. 5994
Fort Benning
Ft. Benning Co: Chattahoochee GA 31905
Landholding Agency: Army
Property Number: 21200420042
Status: Excess
Comments: 2016 sq. ft., most recent use—ammo storage, off-site use only

Bldg. 5995
Fort Benning
Ft. Benning Co: Chattahoochee GA 31905
Landholding Agency: Army

Property Number: 21200420043
Status: Excess
Comments: 114 sq. ft., most recent use—storage, off-site use only

Bldg. T01
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420181
Status: Excess
Comments: 11,682 sq. ft., most recent use—admin., off-site use only

Bldg. T04
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420182
Status: Excess
Comments: 8292 sq. ft., most recent use—admin., off-site use only

Bldg. T05
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420183
Status: Excess
Comments: 7992 sq. ft., most recent use—admin., off-site use only

Bldg. T06
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420184
Status: Excess
Comments: 3305 sq. ft., most recent use—communication center, off-site use only

Bldg. T55
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420187
Status: Excess
Comments: 6490 sq. ft., most recent use—admin., off-site use only

Bldg. T85
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420188
Status: Excess
Comments: 3283 sq. ft., most recent use—post chapel, off-site use only

Bldg. T131
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420189
Status: Excess
Comments: 4720 sq. ft., most recent use—admin., off-site use only

Bldg. T132
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420190
Status: Excess
Comments: 4720 sq. ft., most recent use—admin., off-site use only

Bldg. T157
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420191
Status: Excess
Comments: 1440 sq. ft., most recent use—education center, off-site use only

Bldg. 01002
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420197
Status: Excess
Comments: 9267 sq. ft., most recent use—maintenance shop, off-site use only

Bldg. 01003
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420198
Status: Excess
Comments: 9267 sq. ft., most recent use—admin, off-site use only

Bldg. 19101
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420215
Status: Excess
Comments: 6773 sq. ft., most recent use—simulator bldg., off-site use only

Bldg. 19102
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420216
Status: Excess
Comments: 3250 sq. ft., most recent use—simulator bldg., off-site use only

Bldg. T19111
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420217
Status: Excess
Comments: 1440 sq. ft., most recent use—admin., off-site use only

Bldg. 19112
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420218
Status: Excess
Comments: 1344 sq. ft., most recent use—storage, off-site use only

Bldg. 19113
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420219
Status: Excess
Comments: 1440 sq. ft., most recent use—admin., off-site use only

Bldg. T19201
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420220
Status: Excess
Comments: 960 sq. ft., most recent use—physical fitness center, off-site use only

Bldg. 19202
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420221
Status: Excess
Comments: 1210 sq. ft., most recent use—community center, off-site use only

Bldg. 19204 thru 19207
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420222
Status: Excess
Comments: 960 sq. ft., most recent use—admin., off-site use only

Bldgs. 19208 thru 19211
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420223
Status: Excess
Comments: 1540 sq. ft., most recent use—general installation bldg., off-site use only

Bldg. 19212
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420224
Status: Excess
Comments: 1248 sq. ft., off-site use only

Bldg. 19213
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420225
Status: Excess
Comments: 1540 sq. ft., most recent use—general installation bldg., off-site use only

Bldg. 19214
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420226
Status: Excess
Comments: 1796 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19215
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420227
Status: Excess
Comments: 1948 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19216
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420228
Status: Excess
Comments: 1540 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19217
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420229
Status: Excess
Comments: 120 sq. ft., most recent use—nav aids bldg., off-site use only

Bldg. 19218
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420230
Status: Excess
Comments: 2925 sq. ft., most recent use—general installation bldg., off-site use only

Bldgs. 19219, 19220
Fort Stewart
Ft. Stewart Co: Liberty GA 31314

Landholding Agency: Army
Property Number: 21200420231
Status: Excess
Comments: 1200 sq. ft., most recent use—general installation bldg., off-site use only

Bldg. 19223
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420232
Status: Excess
Comments: 6433 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19225
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420233
Status: Excess
Comments: 4936 sq. ft., most recent use—dining facility, off-site use only

Bldg. 19226
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420234
Status: Excess
Comments: 136 sq. ft., most recent use—general purpose installation bldg., off-site use only

Bldg. T19228
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420235
Status: Excess
Comments: 400 sq. ft., most recent use—admin., off-site use only

Bldg. 19229
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420236
Status: Excess
Comments: 640 sq. ft., most recent use—vehicle shed, off-site use only

Bldg. 19232
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420237
Status: Excess
Comments: 96 sq. ft., most recent use—general purpose installation, off-site use only

Bldg. 19233
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420238
Status: Excess
Comments: 48 sq. ft., most recent use—fire support, off-site use only

Bldg. 19236
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420239
Status: Excess
Comments: 1617 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19238
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21200420240
Status: Excess
Comments: 738 sq. ft., off-site use only

Bldg. 01674
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Landholding Agency: Army
Property Number: 21200510056
Status: Unutilized
Comments: 5311 sq. ft., needs rehab, most recent use—gen. inst., off-site use only

Bldg. 01675
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Landholding Agency: Army
Property Number: 21200510057
Status: Unutilized
Comments: 5475 sq. ft., needs rehab, most recent use—gen. inst., off-site use only

Bldg. 01676
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Landholding Agency: Army
Property Number: 21200510058
Status: Unutilized
Comments: 7209 sq. ft., needs rehab, most recent use—gen. inst., off-site use only

Bldg. 01677
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200510059
Status: Unutilized
Comments: 5311 sq. ft., needs rehab, most recent use—gen. inst., off-site use only

Bldg. 01678
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Landholding Agency: Army
Property Number: 21200510060
Status: Unutilized
Comments: 6488 sq. ft., needs rehab, most recent use—gen. inst., off-site use only

Bldg. 00051
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200520087
Status: Excess
Comments: 3196 sq. ft., most recent use—court room, off-site use only

Bldg. 00052
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200520088
Status: Excess
Comments: 1250 sq. ft., most recent use—admin., off-site use only

Bldg. 00053
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200520089
Status: Excess
Comments: 2844 sq. ft., most recent use—admin., off-site use only

Bldg. 00054
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200520090
Status: Excess
Comments: 4425 sq. ft., most recent use—admin., off-site use only

Bldg. 01243
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200610040
Status: Excess
Comments: 1258 sq. ft., most recent use—ref/ac facility, off-site use only

Bldg. 01244
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200610041
Status: Excess
Comments: 4096 sq. ft., presence of asbestos, most recent use—hdqts. facility, off-site use only

Bldg. 01318
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 21200610042
Status: Excess
Comments: 1500 sq. ft., most recent use—storage, off-site use only

Bldg. 00612
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610043
Status: Excess
Comments: 5298 sq. ft., needs rehab, most recent use—health clinic, off-site use only

Bldg. 00614
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610044
Status: Excess
Comments: 10,157 sq. ft., needs rehab, most recent use—brigade hqtrs, off-site use only

Bldg. 00618
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610045
Status: Excess
Comments: 6137 sq. ft., needs rehab, most recent use—brigade hqtrs, off-site use only

Bldg. 00628
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610046
Status: Excess
Comments: 10,050 sq. ft., needs rehab, most recent use—brigade hqtrs, off-site use only

Bldg. 01079
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610047
Status: Excess
Comments: 7680 sq. ft., most recent use—range/target house, off-site use only

Bldg. 07901
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610049
Status: Excess
Comments: 4800 sq. ft., most recent use—range support, off-site use only

Bldg. 08031
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610050
Status: Excess
Comments: 1296 sq. ft., most recent use—range/target house, off-site use only

Bldg. 08081
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610052
Status: Excess
Comments: 1296 sq. ft., most recent use—range/target house, off-site use only

Bldg. 08252
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200610053
Status: Excess
Comments: 145 sq. ft., most recent use—control tower, off-site use only

Kentucky

Bldg. 06894
Fort Campbell
Christian KY 42223
Landholding Agency: Army
Property Number: 21200630070
Status: Unutilized
Comments: 4240 sq. ft., most recent use—vehicle maintenance shop, off-site use only

Bldg. 06895
Fort Campbell
Christian KY 42223
Landholding Agency: Army
Property Number: 21200630071
Status: Unutilized
Comments: 4725 sq. ft., most recent use—storage, off-site use only

Louisiana

Bldg. T401
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200540084
Status: Unutilized
Comments: 2169 sq. ft., most recent use—admin., off-site use only

Bldgs. T406, T407, T411
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200540085
Status: Unutilized
Comments: 6165 sq. ft., most recent use—admin., off-site use only

Bldg. T412
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200540086
Status: Unutilized
Comments: 12,251 sq. ft., most recent use—admin., off-site use only

Bldgs. T414, T421
Fort Polk
Ft. Polk LA 71459
Landholding Agency: Army
Property Number: 21200540087
Status: Unutilized
Comments: 6165/1688 sq. ft., most recent use—admin., off-site use only

Maryland

Bldg. 8608
Fort George G. Meade
Ft. Meade MD 20755–5115
Landholding Agency: Army
Property Number: 21200410099
Status: Unutilized
Comments: 2372 sq. ft., concrete block, most recent use—PX exchange, off-site use only

Bldg. 8612
Fort George G. Meade
Ft. Meade MD 20755–5115
Landholding Agency: Army
Property Number: 21200410101
Status: Unutilized
Comments: 2372 sq. ft., concrete block, most recent use—family life ctr., off-site use only

Bldg. 0001A
Federal Support Center
Olney Co: Montgomery MD 20882
Landholding Agency: Army
Property Number: 21200520114
Status: Unutilized
Comments: 9000 sq. ft., most recent use—storage

Bldg. 0001C
Federal Support Center
Olney Co: Montgomery MD 20882
Landholding Agency: Army
Property Number: 21200520115
Status: Unutilized
Comments: 2904 sq. ft., most recent use—mess hall

Bldgs. 00032, 00H14, 00H24
Federal Support Center
Olney Co: Montgomery MD 20882
Landholding Agency: Army
Property Number: 21200520116
Status: Unutilized
Comments: various sq. ft., most recent use—storage

Bldgs. 00034, 00H016
Federal Support Center
Olney Co: Montgomery MD 20882
Landholding Agency: Army
Property Number: 21200520117
Status: Unutilized
Comments: 400/39 sq. ft., most recent use—storage

Bldgs. 00H10, 00H12
Federal Support Center
Olney Co: Montgomery MD 20882
Landholding Agency: Army
Property Number: 21200520118
Status: Unutilized
Comments: 2160/469 sq. ft., most recent use—vehicle maintenance

Michigan

Bldg. 00001
Sheridan Hall USARC
501 Euclid Avenue
Helena Co: Lewis MI 59601–2865
Landholding Agency: Army
Property Number: 21200510066
Status: Unutilized
Comments: 19,321 sq. ft., most recent use—reserve center

Missouri

Bldg. 1230
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200340087
Status: Unutilized
Comments: 9160 sq. ft., most recent use—training, off-site use only

Bldg. 1621
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200340088
Status: Unutilized
Comments: 2400 sq. ft., most recent use—exchange branch, off-site use only

Bldg. 5760
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410102
Status: Unutilized
Comments: 2000 sq. ft., most recent use—classroom, off-site use only

Bldg. 5762
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410103
Status: Unutilized
Comments: 104 sq. ft., off-site use only

Bldg. 5763
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410104
Status: Unutilized
Comments: 120 sq. ft., most recent use—observation tower, off-site use only

Bldg. 5765
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410105
Status: Unutilized
Comments: 800 sq. ft., most recent use—range support, off-site use only

Bldg. 5760
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200420059
Status: Unutilized
Comments: 2000 sq. ft., most recent use—classroom, off-site use only

Bldg. 5762
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200420060
Status: Unutilized
Comments: 104 sq. ft., off-site use only

Bldg. 5763
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200420061
Status: Unutilized
Comments: 120 sq. ft., most recent use—obs. tower, off-site use only

Bldg. 5765
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200420062
Status: Unutilized
Comments: 800 sq. ft., most recent use—support bldg., off-site use only

Bldg. 00467
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743
Landholding Agency: Army
Property Number: 21200530085
Status: Unutilized
Comments: 2790 sq. ft., most recent use—fast food facility, off-site use only

New York

Bldgs. 1511–1518
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Landholding Agency: Army
Property Number: 21200320160
Status: Unutilized
Comments: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldgs. 1523–1526
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Landholding Agency: Army
Property Number: 21200320161
Status: Unutilized
Comments: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldgs. 1704–1705, 1721–1722
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Landholding Agency: Army
Property Number: 21200320162
Status: Unutilized
Comments: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldg. 1723
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Landholding Agency: Army
Property Number: 21200320163
Status: Unutilized
Comments: 2400 sq. ft., needs rehab, most recent use—day room, off-site use only

Bldgs. 1706–1709
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Landholding Agency: Army
Property Number: 21200320164
Status: Unutilized
Comments: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldgs. 1731–1735
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Landholding Agency: Army
Property Number: 21200320165
Status: Unutilized
Comments: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

North Carolina

Bldg. N4116
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310
Landholding Agency: Army
Property Number: 21200240087
Status: Excess
Comments: 3944 sq. ft., possible asbestos/lead paint, most recent use—community facility, off-site use only

Texas

Bldgs. 4219, 4227
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220139
Status: Unutilized
Comments: 8056, 500 sq. ft., most recent use—admin., off-site use only

Bldgs. 4229, 4230, 4231
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220140
Status: Unutilized
Comments: 9000 sq. ft., most recent use—hq. bldg., off-site use only

Bldgs. 4244, 4246
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220141
Status: Unutilized
Comments: 9000 sq. ft., most recent use—storage, off-site use only

Bldgs. 4260, 4261, 4262
Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200220142
Status: Unutilized
Comments: 7680 sq. ft., most recent use—storage, off-site use only

Bldg. 04335
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200440090
Status: Excess
Comments: 3378 sq. ft., possible asbestos, most recent use—general, off-site use only

Bldg. 04465
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200440094
Status: Excess
Comments: 5310 sq. ft., possible asbestos, most recent use—general, off-site use only

Bldg. 04468
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200440096
Status: Excess
Comments: 3100 sq. ft., possible asbestos, most recent use—misc., off-site use only

Bldgs. 04475–04476
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200440098
Status: Excess
Comments: 3241 sq. ft., possible asbestos, most recent use—general, off-site use only

Bldg. 04477
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200440099
Status: Excess
Comments: 3100 sq. ft., possible asbestos, most recent use—general, off-site use only

Bldg. 07002
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200440100
Status: Excess
Comments: 2598 sq. ft., possible asbestos, most recent use—fire station, off-site use only

Bldg. 57001
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200440105
Status: Excess
Comments: 53,024 sq. ft., possible asbestos, most recent use—storage, off-site use only

Bldgs. 125, 126
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620075
Status: Excess
Comments: 2700/7200 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 190
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620076
Status: Excess
Comments: 2995 sq. ft., presence of asbestos, most recent use—conf. center, off-site use only

Bldg. 02240
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620078
Status: Excess
Comments: 487 sq. ft., presence of asbestos, most recent use—pool svc bldg, off-site use only

Bldg. 04164
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620079
Status: Excess
Comments: 2253 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldgs. 04218, 04228
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620080
Status: Excess
Comments: 4682/9000 sq. ft., presence of asbestos, most recent use—admin, off-site use only

Bldg. 04272
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620081
Status: Excess

Comments: 7680 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 04415
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620083
Status: Excess
Comments: 1750 sq. ft., presence of asbestos, most recent use—classroom, off-site use only

4 Bldgs.
Fort Hood
04419, 04420, 04421, 04424
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620084
Status: Excess
Comments: 5310 sq. ft., presence of asbestos, most recent use—admin., off-site use only

4 Bldgs.
Fort Hood
04425, 04426, 04427, 04429
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620085
Status: Excess
Comments: 5310 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 04430
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620087
Status: Excess
Comments: 3241 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 04434
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620088
Status: Excess
Comments: 5310 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 04439
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620089
Status: Excess
Comments: 3312 sq. ft., presence of asbestos, most recent use—co ops bldg, off-site use only

Bldgs. 04470, 04471
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620090
Status: Excess
Comments: 3241 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 04493
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620091
Status: Excess
Comments: 3108 sq. ft., presence of asbestos, most recent use—housing maint., off-site use only

Bldg. 04494
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620092
Status: Excess
Comments: 2686 sq. ft., presence of asbestos, most recent use—repair bays, off-site use only

Bldg. 04632
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620093
Status: Excess
Comments: 4000 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 04640
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620094
Status: Excess
Comments: 1600 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 04645
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620095
Status: Excess
Comments: 5300 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 04906
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620096
Status: Excess
Comments: 1040 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 20121
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620097
Status: Excess
Comments: 5200 sq. ft., presence of asbestos, most recent use—rec center, off-site use only

Bldg. 91052
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200620101
Status: Excess
Comments: 224 sq. ft., presence of asbestos, most recent use—lab/test, off-site use only

Bldg. 1345
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740070
Status: Excess
Comments: 240 sq. ft., presence of asbestos, most recent use—oil storage, off-site use only

Bldgs. 1348, 1941
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740071
Status: Excess
Comments: 640/900 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 1919
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740072
Status: Excess
Comments: 80 sq. ft., presence of asbestos, most recent use—pump station, off-site use only

Bldg. 1943
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740073
Status: Excess
Comments: 780 sq. ft., presence of asbestos, most recent use—rod & gun club, off-site use only

Bldg. 1946
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740074
Status: Excess
Comments: 2880 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 4205
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740075
Status: Excess
Comments: 600 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 4207
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740076
Status: Excess
Comments: 2240 sq. ft., presence of asbestos, most recent use—maint. shop, off-site use only

Bldg. 4208
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740077
Status: Excess
Comments: 9464 sq. ft., presence of asbestos, most recent use—warehouse, off-site use only

Bldgs. 4210, 4211, 4216
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740078
Status: Excess
Comments: 4625/5280 sq. ft., presence of asbestos, most recent use—maint., off-site use only

Bldg. 4219A
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740079
Status: Excess
Comments: 446 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 04252
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740081
Status: Excess

Comments: 9000 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 4255
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740082
Status: Excess
Comments: 448 sq. ft., presence of asbestos, off-site use only

Bldg. 04480
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740083
Status: Excess
Comments: 2700 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 04485
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740084
Status: Excess
Comments: 640 sq. ft., presence of asbestos, most recent use—maint., off-site use only

Bldgs. 04487, 04488
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740085
Status: Excess
Comments: 48/80 sq. ft., presence of asbestos, most recent use—utility bldg., off-site use only

Bldg. 04489
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21200740086
Status: Excess
Comments: 880 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldgs. 4491, 4492
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740087
Status: Excess
Comments: 3108/1040 sq. ft., presence of asbestos, most recent use—maint., off-site use only

Bldgs. 04902, 04905
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740088
Status: Excess
Comments: 2575/6136 sq. ft., presence of asbestos, most recent use—vet bldg., off-site use only

Bldgs. 04914, 04915, 04916
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740089
Status: Excess
Comments: 371 sq. ft., presence of asbestos, most recent use—animal shelter, off-site use only

Bldg. 20102
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740091
Status: Excess
Comments: 252 sq. ft., presence of asbestos, most recent use—recreation services, off-site use only

Bldg. 20118
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740092
Status: Excess
Comments: 320 sq. ft., presence of asbestos, most recent use—maint., off-site use only

Bldg. 29027
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740093
Status: Excess
Comments: 2240 sq. ft., presence of asbestos, most recent use—hdqts bldg, off-site use only

Bldg. 56017
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740094
Status: Excess
Comments: 2592 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 56202
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740095
Status: Excess
Comments: 1152 sq. ft., presence of asbestos, most recent use—training, off-site use only

Bldg. 56224
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740096
Status: Excess
Comments: 80 sq. ft., presence of asbestos, off-site use only

Bldg. 56305
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740097
Status: Excess
Comments: 2160 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 56311
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740098
Status: Excess
Comments: 480 sq. ft., presence of asbestos, most recent use—laundry, off-site use only

Bldg. 56327
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740099
Status: Excess
Comments: 6000 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 56329
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740100
Status: Excess
Comments: 2080 sq. ft., presence of asbestos, most recent use—officers qtrs., off-site use only

9 Bldgs.
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740101
Status: Excess
Directions: 56526, 56527, 56528, 56530, 56531, 56536, 56537, 56538, 56540
Comments: various sq. ft., presence of asbestos, most recent use—lavatory, off-site use only

Bldg. 92043
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740102
Status: Excess
Comments: 450 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 92072
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740103
Status: Excess
Comments: 2400 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 92083
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740104
Status: Excess
Comments: 240 sq. ft., presence of asbestos, most recent use—utility bldg., off-site use only

Bldgs. 04213, 04227
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740189
Status: Excess
Comments: 14183/10500 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 4404
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740190
Status: Excess
Comments: 8043 sq ft., presence of asbestos, most recent use—training bldg., off-site use only

Bldg. 56607
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740191
Status: Excess
Comments: 3552 sq. ft., presence of asbestos, most recent use—chapel, off-site use only

Bldg. 91041
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740192
Status: Excess
Comments: 1920 sq. ft., presence of asbestos, most recent use—shed, off-site use only

5 Bldgs.
Fort Hood
93010, 93011, 93012, 93014
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740193
Status: Excess
Comments: 210/800 sq. ft., presence of asbestos, most recent use—private club, off-site use only

Bldg. 94031
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200740194
Status: Excess
Comments: 1008 sq. ft., presence of asbestos, most recent use—training, off-site use only

Virginia

Bldg. T2827
Fort Pickett
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 21200320172
Status: Unutilized
Comments: 3550 sq. ft., presence of asbestos, most recent use—dining, off-site use only

Bldg. T2841
Fort Pickett
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 21200320173
Status: Unutilized
Comments: 2950 sq. ft., presence of asbestos, most recent use—dining, off-site use only

Bldg. 01014
Fort Story
Ft. Story VA 23459
Landholding Agency: Army
Property Number: 21200720067
Status: Unutilized
Comments: 1014 sq. ft., most recent use—admin., off-site use only

Bldg. 01022
Fort Story
Ft. Story VA 23459
Landholding Agency: Army
Property Number: 21200720068
Status: Unutilized
Comments: 2398 sq. ft., most recent use—dining, off-site use only

4 Bldgs.
Fort Story
01023, 01029, 01036, 01038
Ft. Story VA 23459
Landholding Agency: Army
Property Number: 21200720069
Status: Unutilized
Comments: 4800 sq. ft., most recent use—barracks, off-site use only

Bldg. 01063
Fort Story
Ft. Story VA 23459
Landholding Agency: Army
Property Number: 21200720072
Status: Unutilized
Comments: 2000 sq. ft., most recent use—storage, off-site use only

Bldg. 00215
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720073
Status: Unutilized
Comments: 2540 sq. ft., most recent use—admin., off-site use only

4 Bldgs.
Fort Eustis
01514, 01523, 01528, 01529
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720074
Status: Unutilized
Comments: 4720 sq. ft., most recent use—admin., off-site use only

4 Bldgs.
Fort Eustis
01534, 01542, 01549, 01557
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720075
Status: Unutilized
Comments: 4720 sq. ft., most recent use—admin., off-site use only

Bldgs. 01707, 01719
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720077
Status: Unutilized
Comments: 4720 sq. ft., most recent use—admin., off-site use only

Bldg. 01720
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720078
Status: Unutilized
Comments: 1984 sq. ft., most recent use—admin., off-site use only

Bldgs. 01721, 01725
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720079
Status: Unutilized
Comments: 4720 sq. ft., most recent use—admin., off-site use only

Bldgs. 01726, 01735, 01736
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720080
Status: Unutilized
Comments: 1144 sq. ft., most recent use—admin., off-site use only

Bldgs. 01734, 01745, 01747
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720081
Status: Unutilized
Comments: 4720 sq. ft., most recent use—admin., off-site use only

Bldg. 01741
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720082
Status: Unutilized
Comments: 1984 sq. ft., most recent use—admin., off-site use only

Bldg. 02720
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200720083
Status: Unutilized
Comments: 400 sq. ft., most recent use—storage, off-site use only

Washington

Bldg. 05904
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21200240092
Status: Excess
Comments: 82 sq. ft., most recent use—guard shack, off-site use only

Unsuitable Properties

Buildings (by State)

Alabama

113 Bldgs.
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200040005–21200040012, 21200120018, 21200220003–21200220004, 21200240007–21200240022, 21200330001–2120330004, 21200340011, 21200340095, 21200420068–21200420071, 21200440001, 21200520002, 21200540002–21200540006, 21200610003, 21200620002, 21200630020, 21200740108, 21200810002, 21200830007, 21200840003–21200840007, 21200920011
Status: Unutilized
Reason: Secured Area, Extensive deterioration

19 Bldgs., Fort Rucker
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 21200040013, 21200440005, 21200540001, 21200540100, 21200610008, 21200620001, 21200640002–21200640005, 21200720001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 01271, Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 21200430004
Status: Unutilized
Reason: Extensive deterioration

9 Bldgs., Anniston Army Depot
Calhoun AL 36201
Landholding Agency: Army
Property Number: 21200920029
Status: Unutilized
Reasons: Extensive deterioration

Alaska

3 Bldgs., Fort Wainwright
Ft. Wainwright AK 99703
Landholding Agency: Army
Property Number: 21200610001–21200610002
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured area, Floodway

6 Bldgs., Fort Richardson
Ft. Richardson Co: AK 99505
Landholding Agency: Army
Property Number: 21200340006, 21200820058, 21200830006, 21200920028
Status: Excess
Reason: Extensive deterioration

Bldg. 02A60
Noatak Armory
Kotzebue AK

Landholding Agency: Army
Property Number: 21200740105
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material

Bldg. 00655
Fort Greely
Fort Greely AK 96740
Landholding Agency: Army
Property Number: 21200930004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration, Within 2000 ft. of flammable or explosive material

Arizona

32 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Number: 219014560–219014591
Status: Underutilized
Reason: Secured Area

10 properties: 753 earth covered igloos; above ground standard magazines
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40.
Landholding Agency: Army
Property Number: 219014592–219014601
Status: Underutilized
Reason: Secured Area

7 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–5000
Location: 12 miles west of Flagstaff on I–40
Landholding Agency: Army
Property Number: 219030273, 219120177–219120181
Status: Unutilized
Reason: Secured Area

102 Bldgs.
Camp Navajo
Bellemont Co: AZ 86015
Landholding Agency: Army
Property Number: 21200140006–21200140010, 21200740109–21200740114
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area (Most are extensively deteriorated)

7 Bldgs.
Papago Park Military Rsv
Phoenix AZ 85008
Landholding Agency: Army
Property Number: 21200740001–21200740002
Status: Unutilized
Reason: Extensive deterioration, Within airport runway clear zone, Secured Area

6 Bldgs., Fort Huachuca
Cochise AZ 85613
Landholding Agency: Army
Property Number: 21200820061
Status: Excess
Reason: Extensive deterioration

Arkansas

190 Bldgs., Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219630019, 219630021, 219630029, 219640462–219640477, 21200110001–21200110017, 21200140011–21200140014, 21200530001
Status: Unutilized
Reason: Extensive deterioration

20 Bldgs., Pine Bluff Arsenal
Jefferson AR 71602
Landholding Agency: Army
Property Number: 21200820059–21200820060
Status: Unutilized
Reason: Secured Area

California

Bldg. 18
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367
Landholding Agency: Army
Property Number: 219012554
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

13 Bldgs.
Riverbank Army Ammunition Plant
Riverbank Co: Stanislaus CA 95367
Landholding Agency: Army
Property Number:219013582–219013588,219013590, 219240444–219240446, 21200530003, 21200840009
Status: Underutilized
Reason: Secured Area

Bldgs. 13, 171, 178
Riverbank Ammun Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367
Landholding Agency: Army
Property Number: 219120162–219120164
Status: Underutilized
Reason: Secured Area

43 Bldgs.
DDDRW Sharpe Facility
Tracy Co: San Joaquin CA 95331
Landholding Agency: Army
Property Number: 219610289, 21199930021, 21200030005–21200030015, 21200040015, 21200120029–21200120039, 21200130004, 21200240025–21200240030, 21200330007, 21200920031, 21200930005
Status: Unutilized
Reason: Secured Area

61 Bldgs.
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219520040, 21200530002,
Status: Unutilized
Reason: Extensive deterioration

8 Bldgs.
Sierra Army Depot
Herlong Co: Lassen CA 96113
Landholding Agency: Army
Property Number: 21199840015, 21199920033–21199920036
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

575 Bldgs., Camp Roberts
Camp Roberts Co: San Luis Obispo CA
Landholding Agency: Army
Property Number: 21199730014, 219820205–219820234, 21200530004, 21200540007–21200540031, 21200830009–21200830010
Status: Excess
Reason: Secured Area, Extensive deterioration

24 Bldgs.
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944
Landholding Agency: Army
Property Number: 21199940051
Status: Unutilized
Reason: Extensive deterioration

46 Bldgs.
Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310
Landholding Agency: Army
Property Number: 21199920037–21199920038, 21200030016–21200030018, 21200040014, 21200110018–21200110020, 21200130002–21200130003, 21200210001–21200210005, 21200240031–21200240033
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldgs. 00131, 00273
Fort Hunter Liggett
Monterey CA 93928
Landholding Agency: Army
Property Number: 21200840008
Status: Unutilized
Reasons: Extensive deterioration

5 Bldgs, March AFRC
Riverside CA 92518
Landholding Agency: Army
Property Number: 21200710001–21200710002
Status: Unutilized
Reasons: Extensive deterioration

7 Bldgs., Camp Parks
Dublin CA 94568
Landholding Agency: Army
Property Number: 21200840010–21200840012
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 01294, Mare Island USAR Center
Vallejo CA 94592
Landholding Agency: Army
Property Number: 21200930006
Status: Excess
Reasons: Extensive deterioration

Colorado

Bldgs. T–317, T–412, 431, 433
Rocky Mountain Arsenal
Commerce Co: Adams CO 80022–2180
Landholding Agency: Army
Property Number: 219320013–219320016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

21 Bldgs. Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219830024, 21200130006–21200130009, 21200420161–21200420164, 21200720003, 21200740003–21200740004, 21200820063, 21200930007
Status: Unutilized
Reason: Extensive deterioration (Some are within 2000 ft. of flammable or explosive material)

31 Bldgs., Pueblo Chemical Depot
Pueblo CO 81006–9330
Landholding Agency: Army
Property Number: 21200030019–21200030021, 21200420165–21200420166, 21200610009–21200610010, 21200630023, 21200720002, 21200720007–21200720008, 21200840013–21200840014, 21200930008

Status: Unutilized
Reason: Extensive deterioration, Secured Area

Georgia

Fort Stewart, Sewage Treatment Plant
Ft. Stewart Co: Hinesville GA 31314
Landholding Agency: Army
Property Number: 219013922
Status: Unutilized
Reason: Sewage treatment

10 Bldgs., Fort Gordon
Augusta Co: Richmond GA 30905
Landholding Agency: Army
Property Number: 21200610012, 21200720009–21200720010
Status: Unutilized
Reason: Extensive deterioration

162 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219610320, 219810028, 219810030, 219830073, 21200030026, 21200330008–21200330010, 21200410001–21200410009, 21200430011–21200430016, 21200440009, 21200510003, 21200610011, 21200620004, 21200630024–21200630027, 21200640007–21200640020, 21200710011, 21200720004–21200720005, 21200740006, 21200740121–21200740122, 21200820064, 21200830011, 21200840015, 21200920014, 21200920032
Status: Unutilized
Reason: Extensive deterioration

33 Bldgs.
Fort Gillem
Forest Park Co: Clayton GA 30050
Landholding Agency: Army
Property Number: 219620815, 21199920044–21199920050, 21200140016, 21200220011–21200220012, 21200230005, 21200340013–21200340016, 21200420074–21200420082, 21200810003
Status: Unutilized
Reason: Extensive deterioration, Secured Area

36 Bldgs.
Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21199940060, 21200540034, 21200710005–21200710009, 21200720011, 21200740007, 21200740123–21200740125, 21200820066, 21200920013, 21200920034
Status: Unutilized
Reason: Extensive Deterioration

16 Bldgs., Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 219830068, 21200710010, 21200720012, 21200740117–21200740119, 21200820065, 21200920012, 21200920033
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs., Fort McPherson
Ft. McPherson Co: Fulton GA 30330–5000
Landholding Agency: Army
Property Number: 21200040016–21200040018, 21200230004, 21200520004
Status: Unutilized
Reason: Secured Area

Bldgs. 00023, 00049, 00070, Camp Merrill
Dahlonega Co: Lumpkin GA 30533
Landholding Agency: Army
Property Number: 21200520005
Status: Unutilized
Reason: Extensive deterioration

Hawaii

46 Bldgs., Schofield Barracks
Wahiawa Co: Wahiawa HI 96786
Landholding Agency: Army
Property Number: 219014836–219014837, 21200540035–21200540037, 21200620008–21200620010, 21200640022, 21200740010–21200740012, 21200810004–21200810006, 21200840016, 21200920015
Status: Unutilized
Reason: Secured Area (Most are extensively deteriorated)

70 Bldgs.
Kipapa Ammo Storage Site
Honolulu Co: HI 96786
Landholding Agency: Army
Property Number: 21200520006, 21200620011
Status: Unutilized
Reason: Extensive deterioration

9 Bldgs.
Wheeler Army Airfield
Honolulu Co: HI 96786
Landholding Agency: Army
Property Number: 21200520008, 21200620006–21200620007, 21200630028, 21200830012
Status: Unutilized
Reason: Extensive deterioration

140 Bldgs., Aliamanu
Honolulu Co: HI 96818
Landholding Agency: Army
Property Number: 21200440015–21200440017, 21200620005
Status: Unutilized
Reason: Contamination (Some are in a secured area.)

7 Bldgs., Kalaeloa
Kapolei HI 96707
Landholding Agency: Army
Property Number: 21200640108–21200640112
Status: Unutilized
Reasons: Extensive deterioration

6 Facilities
Tanapag USARC
Tanapag HI
Landholding Agency: Army
Property Number: 21200740008, 21200830047, 21200920035
Status: Unutilized
Reasons: Extensive deterioration

Idaho

Bldg. 00110, Wilder
Canyon ID 83676
Landholding Agency: Army
Property Number: 21200740134
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 00011, Edgemeade
Elmore ID 83647
Landholding Agency: Army
Property Number: 21200930009
Status: Unutilized
Reasons: Extensive deterioration

Illinois

4 Bldgs.
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219620428, 21200140043–21200140044, 21200920037
Status: Unutilized
Reason: Some are in a secured area, Some are extensively deteriorated, Some are within 2000 ft. of flammable or explosive material

15 Bldgs.
Charles Melvin Price Support Center
Granite City Co: Madison IL 62040
Landholding Agency: Army
Property Number: 219820027, 21199930042–21199930053
Status: Unutilized
Reason: Secured Area, Floodway, Extensive deterioration

Indiana

139 Bldgs., Newport Army Ammunition Plant
Newport Co: Vermillion IN 47966
Landholding Agency: Army
Property Number: 219011584, 219011586–219011587, 219011589–219011590, 219011592–219011627, 219011629–219011636, 219011638–219011641, 219210149, 219430336, 219430338, 219530079–219530096, 219740021–219740026, 219820031–219820032, 21199920063, 21200330015–21200330016, 21200440019, 21200610013–21200610014, 21200710025, 21200820037
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated.)

2 Bldgs., Atterbury Reserve Forces Training Area
Edinburgh Co: Johnson IN 46124–1096
Landholding Agency: Army
Property Number: 219230030–219230031
Status: Unutilized
Reason: Extensive deterioration

Iowa

201 Bldgs., Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638
Landholding Agency: Army
Property Number: 219012605–219012607, 219012609, 219012611, 219012613, 219012620, 219012622, 219012624, 219013706–219013738, 219120172–219120174, 219440112–219440158, 219520002, 219520070, 219740027, 21200220022, 21200230019–21200230023, 21200330012–21200330014, 21200340017, 21200420083, 21200430018, 21200440018, 21200510004–21200510006, 21200520009, 21200540038–21200540039, 21200620012, 21200710020–21200710024, 21200740126–21200740133, 21200810008
Status: Unutilized
Reason: (Many are in a Secured Area) (Most are within 2000 ft. of flammable or explosive material.)

27 Bldgs., Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638
Landholding Agency: Army
Property Number: 219230005–219230029, 219310017, 219340091
Status: Unutilized
Reason: Extensive deterioration

Bldgs. TD010, TD020
Camp Dodge
Johnson IA 50131

Landholding Agency: Army
Property Number: 21200920036
Status: Excess
Reasons: Extensive deterioration

Kansas

37 Bldgs.
Kansas Army Ammunition Plant
Production Area
Parsons Co: Labette KS 67357
Landholding Agency: Army
Property Number: 219011909–219011945
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material)

121 Bldgs.
Kansas Army Ammunition Plant
Parsons Co: Labette KS 67357
Landholding Agency: Army
Property Number: 219620518–219620638
Status: Unutilized
Reason: Secured Area

9 Bldgs.
Fort Riley
Ft. Riley Co: Riley KS 66442
Landholding Agency: Army
Property Number: 21200310007, 21200540040, 21200740135, 21200920038–21200920039
Status: Unutilized
Reason: Extensive deterioration

3 Bldgs.
Fort Leavenworth
Leavenworth KS 66027
Landholding Agency: Army
Property Number: 21200820068, 21200840018
Status: Unutilized
Reasons: Extensive deterioration

Kentucky

Bldg. 126
Lexington-Blue Grass Army Depot
Lexington Co: Fayette KY 40511
Landholding Agency: Army
Property Number: 219011661
Status: Unutilized
Reason: Secured Area, Sewage treatment facility

Bldg. 12
Lexington-Blue Grass Army Depot
Lexington Co: Fayette KY 40511
Landholding Agency: Army
Property Number: 219011663
Status: Unutilized
Reason: Industrial waste treatment plant

65 Bldgs., Fort Knox
Ft. Knox Co: Hardin KY 40121
Landholding Agency: Army
Property Number: 21200130028–21200130029, 21200440025–21200440026, 21200510007–21200510009, 21200640023, 21200740014, 21200820070, 21200840019–21200840021, 21200930011
Status: Unutilized
Reason: Extensive deterioration

125 Bldgs., Fort Campbell
Ft. Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 21200110038-21200110043, 21200140053, 21200220029, 21200330018, 21200520012–21200520015, 21200530007, 21200610015, 21200640024–21200640032, 21200720014–21200720025, 21200740139, 21200810010, 21200820069, 21200830013, 21200920040–21200920043
Status: Unutilized
Reason: Extensive deterioration

8 Bldgs., Blue Grass Army Depot
Richmond Co: Madison KY 40475
Landholding Agency: Army
Property Number: 21200520011, 21200740136–21200740138, 21200830014
Status: Unutilized
Reason: Secured Area

Louisiana

528 Bldgs.
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023
Landholding Agency: Army
Property Number: 219011714–219011716, 219011735–219011737, 219012112, 219013863–219013869, 219110131, 219240138–219240147, 219420332, 219610049–219610263, 219620002–219620200, 219620749–219620801, 219820047–219820078
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated)

215 Bldgs., Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 21199920070, 21200130030–21200130043, 21200530008–21200530017, 21200610016–21200610019, 21200620014, 21200640036–21200640048, 21200820002–21200820012, 21200830015–21200830016
Status: Unutilized
Reason: Extensive deterioration (Some are in Floodway.)

Maryland

200 Bldgs., Aberdeen Proving Ground
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219012610, 219012638–219012640, 219012658, 219610489–219610490, 219730077, 219810076–219810112, 219820090, 219820096, 21200120059, 21200120060, 21200410017–21200410032, 21200420098–21200420100, 21200440027, 21200520021, 21200740015, 21200740141–21200740144, 21200810011–21200810018, 21200820134–21200820142, 21200840025–21200840033, 21200920016, 21200920044–21200920045
Status: Unutilized
Reason: Most are in a secured area (Some are within 2000 ft. of flammable or explosive material) (Some are in a floodway) (Some are extensively deteriorated)

63 Bldgs. Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 219810065, 21200140059–21200140060, 21200410014, 21200510018, 21200520020, 21200620015, 21200640049–21200640050, 21200710031, 21200740016
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00211, Curtis Bay Ordnance Depot
Baltimore Co: MD 21226
Landholding Agency: Army
Property Number: 21200320024
Status: Unutilized
Reason: Extensive deterioration

11 Bldgs.
Fort Detrick
Frederick Co: MD 21702
Landholding Agency: Army
Property Number: 21200540041, 21200640113, 21200720026, 21200740140, 21200810019, 21200840023–21200840024
Status: Unutilized
Reason: Secured Area

Bldg. 0001B
Federal Support Center
Olney Co: Montgomery MD 20882
Landholding Agency: Army
Property Number: 21200530018
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Massachusetts

Bldg. 3713, USAG Devens
Devens MA 01434
Landholding Agency: Army
Property Number: 21200840022
Status: Excess
Reasons: Secured Area

Michigan

Bldgs. 5755–5756
Newport Weekend Training Site
Carleton Co: Monroe MI 48166
Landholding Agency: Army
Property Number: 219310060–219310061
Status: Unutilized
Reason: Secured Area, Extensive deterioration

54 Bldgs.
Fort Custer Training Center
2501 26th Street
Augusta Co: Kalamazoo MI 49102–9205
Landholding Agency: Army
Property Number: 21200220058–21200220062, 21200410036–21200410042, 21200540048–21200540051
Status: Unutilized
Reason: Extensive deterioration

39 Bldgs., US Army Garrison-Selfridge
Macomb Co: MI 48045
Landholding Agency: Army
Property Number: 21200420093, 21200510020–21200510023
Status: Unutilized
Reason: Secured Area

4 Bldgs., Poxin USAR Center
Southfield Co: Oakland MI 48034
Landholding Agency: Army
Property Number: 21200330026–21200330027, 21200420095
Status: Unutilized
Reason: Extensive deterioration

20 Bldgs.
Grayling Army Airfield
Grayling Co: Crawford MI 49739
Landholding Agency: Army
Property Number: 21200410034–21200410035, 21200540042–21200540047
Status: Excess
Reason: Extensive deterioration

Bldg. 001, Crabble USARC
Saginaw MI 48601–4099
Landholding Agency: Army
Property Number: 21200420094

Status: Unutilized
Reason: Extensive deterioration

Bldg. 00714
Selfridge Air Natl Guard Base
Macomb Co: MI 48045
Landholding Agency: Army
Property Number: 21200440032
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs., Detroit Arsenal
T0209, T0216, T0246, T0247
Warren Co: Macomb MI 88397–5000
Landholding Agency: Army
Property Number: 21200520022
Status: Unutilized
Reason: Secured Area

Minnesota

160 Bldgs.
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112
Landholding Agency: Army
Property Number: 219120166, 219210014–219210015, 219220227–219220235, 219240328, 219310056, 219320152–219320156, 219330096–219330106, 219340015, 219410159–219410189, 219420198–219420283, 219430060–219430064, 21200130053–21200130054
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material.) (Some are extensively deteriorated.)

Missouri

85 Bldgs., Lake City Army Ammo. Plant
Independence Co: Jackson MO 64050
Landholding Agency: Army
Property Number: 219013666–219013669, 219530134, 219530136, 21199910023–21199910035, 21199920082, 21200030049, 21200820001
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material.)

9 Bldgs., St. Louis Army Ammunition Plant
4800 Goodfellow Blvd.
St. Louis Co: St. Louis MO 63120–1798
Landholding Agency: Army
Property Number: 219120067–219120068, 219610469–219610475
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated.)

75 Bldgs., Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219430075, 21199910020–21199910021, 21200320025, 21200330028–21200330031, 21200430029, 21200530019, 21200640051–21200640052, 21200740145–21200740148, 21200830017, 21200840035–21200840037, 21200920048, 21200930012
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material (Some are extensively deteriorated.)

Bldg. P4122, U.S. Army Reserve Center
St. Louis Co: St. Charles MO 63120–1794
Landholding Agency: Army
Property Number: 21200240055
Status: Unutilized
Reason: Extensive deterioration

Bldgs. P4074, P4072, P4073
St. Louis Ordnance Plant
St. Louis Co: St. Charles MO 63120–1794
Landholding Agency: Army
Property Number: 21200310019
Status: Unutilized
Reason: Extensive deterioration

Bldg. 528, Weldon Springs LTA
Saint Charles MO 63304
Landholding Agency: Army
Property Number: 21200840034
Status: Unutilized
Reasons: Extensive deterioration

Montana

5 Bldgs., Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Landholding Agency: Army
Property Number: 21200420104, 21200740018
Status: Excess
Reasons: Secured Area, Extensive deterioration

Nevada

Bldg. 292
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415
Landholding Agency: Army
Property Number: 219013614
Status: Unutilized
Reason: Secured Area

41 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415
Landholding Agency: Army
Property Number: 219012013, 219013615–219013643, 21200930019
Status: Underutilized
Reason: Secured Area (Some within airport runway clear zone; many within 2000 ft. of flammable and explosive material)

Group 101, 34 Bldgs.
Hawthorne Army Ammunition Plant
Co: Mineral NV 89415–0015
Landholding Agency: Army
Property Number: 219830132
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

New Jersey

289 Bldgs., Picatinny Arsenal
Dover Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219010444–219010474, 219010639–219010664, 219010680–219010715, 219012428, 219012430, 219012433–219012465, 219012469, 219012475, 219012765, 00219014306, 219014311, 219014317, 219140617, 219230123, 219420006, 219530147, 219540005, 219540007, 219740113–219740127, 21199940094–21199940099, 21200130057–21200130063, 21200220063, 21200230072-21200230075, 21200330047–21200330063, 21200410043–21200410044, 21200520024–21200520039, 21200530022–21200530028, 21200620017–21200620022, 21200630001–21200630019, 21200720028, 21200720102–21200720104, 21200810020, 21200820040–21200820047, 21200840038-21200840039, 21200920017, 21200930013
Status: Excess
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material.) (Some are extensively deteriorated and in a floodway.)

6 Bldgs., Ft. Monmouth
Ft. Monmouth Co: NJ 07703
Landholding Agency: Army
Property Number: 21200430030, 21200510025–21200510027
Status: Unutilized
Reason: Extensive deterioration

Bldg. 7427, Fort Dix
Burlington NJ 08640
Landholding Agency: Army
Property Number: 21200740149
Status: Unutilized
Reasons: Extensive deterioration

New Mexico

190 Bldgs., White Sands Missile Range
Dona Ana Co: NM 88002
Landholding Agency: Army
Property Number: 21200410045–21200410049, 21200440034–21200440045, 21200620023, 21200810024-21200810029, 21200820048, 21200930014
Status: Excess
Reason: Secured Area

31 Bldgs., Fort Wingate Army Depot
Gallup NM 87301
Landholding Agency: Army
Property Number: 21200920055–21200920058
Status: Unutilized
Reasons: Secured Area within 2000 ft. of flammable or explosive material

New York

Bldg. 12, Watervliet Arsenal
Watervliet NY
Landholding Agency: Army
Property Number: 219730099
Status: Unutilized
Reason: Extensive deterioration (Secured Area)

13 Bldgs., Youngstown Training Site
Youngstown Co: Niagara NY 14131
Landholding Agency: Army
Property Number: 21200220064–21200220069
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1716, 3014, 3018 U.S. Military Academy
West Point Co: NY 10996
Landholding Agency: Army
Property Number: 21200330064, 21200410050, 21200520040
Status: Unutilized
Reason: Extensive deterioration

229 Bldgs., Fort Drum
Ft. Drum Co: Jefferson NY 13602
Landholding Agency: Army
Property Number: 21200340028, 21200410051, 21200420112–21200420118, 21200520047, 21200530021, 21200540057–21200540059, 21200720106, 21200820050–21200820052, 21200830048–21200830060, 21200840040–21200840042, 21200920018–21200920019, 21200930015–21200930018
Status: Unutilized
Reason: Extensive deterioration Secured Area

Bldg. 108, Fredrick J ILL, Jr. USARC
Bullville Co: Orange NY 10915–0277
Landholding Agency: Army

Property Number: 21200510028
Status: Unutilized
Reason: Secured Area

3 Bldgs., Kerry P. Hein USARC NY058
Shoreham Co: Suffolk NY 11778–9999
Landholding Agency: Army
Property Number: 21200510054
Status: Excess
Reason: Secured Area

7 Bldgs., U.S. Army Garrison
Orange NY 10996
Landholding Agency: Army
Property Number: 21200810030, 21200820049, 21200840043
Status: Underutilized
Reason: Secured Area

North Carolina

508 Bldgs. Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219640074, 219710102–219710110, 219710224, 219810167, 21200410056, 21200430042, 21200440050–21200440051, 21200530029–21200530047, 21200540060, 21200610020, 21200620024–21200620039, 21200630029–21200630053, 21200640055–21200640060, 21200640114, 21200720029–21200720035, 21200740020-21200740023, 21200740154–21200740159, 21200820053-21200820057, 21200830018–21200830023, 21200840044-21200840045, 21200920049–21200920052
Status: Unutilized
Reason: Extensive deterioration

3 Bldgs., Military Ocean Terminal
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219810158–219810160, 21200330032
Status: Unutilized
Reason: Secured Area

5 Bldgs., Simmons Army Airfield
Cumberland NC 28310
Landholding Agency: Army
Property Number: 21200920053
Status: Unutilized
Reasons: Extensive deterioration Secured Area

North Dakota

5 Bldgs., Stanley R. Mickelsen
Nekoma Co: Cavalier ND 58355
Landholding Agency: Army
Property Number: 21199940103–21199940107
Status: Unutilized
Reason: Extensive deterioration

Ohio

186 Bldgs.
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 21199840069–21199840104, 21200240064, 21200420131–21200420132, 21200530051–21200530052
Status: Unutilized
Reason: Secured Area

7 Bldgs., Lima Army Tank Plant
Lima OH 45804–1898
Landholding Agency: Army
Property Number: 219730104–219730110
Status: Unutilized
Reason: Secured Area

3 Bldgs. Defense Supply Center
Columbus Co: Franklin OH 43216
Landholding Agency: Army
Property Number: 21200640061, 21200820072, 21200920059
Status: Unutilized
Reasons: Secured Area

Oklahoma

30 Bldgs., Fort Sill
Lawton Co: Comanche OK 73503
Landholding Agency: Army
Property Number: 219510023, 21200330065, 21200430043, 21200530053–21200530060, 21200840047
Status: Unutilized
Reason: Extensive deterioration

Bldgs. MA050, MA070, Regional Training Institute
Oklahoma City Co: OK 73111
Landholding Agency: Army
Property Number: 21200440052
Status: Unutilized
Reason: Extensive deterioration

Bldgs. GRM03, GRM24, GRM26, GRM34
Camp Gruber Training Site
Braggs Co: OK 74423
Landholding Agency: Army
Property Number: 21200510029–21200510032
Status: Unutilized
Reason: Extensive deterioration

48 Bldgs., McAlester Army Ammo Plant
McAlester Co: Pittsburg OK 74501
Landholding Agency: Army
Property Number: 21200510033–21200510039, 21200520048, 21200740024–21200740025, 21200820073, 21200830024, 21200920062, 21200930020
Status: Excess
Reason: Secured Area

Oregon

11 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838
Landholding Agency: Army
Property Number: 219012174–219012176, 219012178–219012179, 219012190–219012191, 219012197–219012198, 219012217, 219012229
Status: Underutilized
Reason: Secured Area

34 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838
Landholding Agency: Army
Property Number: 219012177, 219012185–219012186, 219012189, 219012195–219012196, 219012199–219012205, 219012207–219012208, 219012225, 219012279, 219014304–219014305, 219014782, 219030362–219030363, 219120032, 21199840108–21199840110, 21199920084–21199920090
Status: Unutilized
Reason: Secured Area

Pennsylvania

23 Bldgs., Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5011
Landholding Agency: Army
Property Number: 219810183–219810190
Status: Unutilized
Reason: Extensive deterioration

9 Bldgs., Defense Distribution Depot
New Cumberland Co: York PA 17070–5001
Landholding Agency: Army
Property Number: 21200830026, 21200920064
Status: Unutilized
Reason: Extensive deterioration, Secured Area

14 Bldgs., Tobyhanna Army Depot
Tobyhanna Co: Monroe PA 18466
Landholding Agency: Army
Property Number: 21200330068, 21200820074, 21200830025, 21200920065
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs., Letterkenny Army Deport
Chambersburg Co: Franklin PA 17201
Landholding Agency: Army
Property Number: 21200920063
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

7 Bldgs. Carlisle Barracks
Cumberland Co: PA 17013
Landholding Agency: Army
Property Number: 21200640115, 21200720107, 21200740026, 21200830001
Status: Excess
Reason: Extensive deterioration

Bldg. 00017, Scranton Army Ammo Plant
Scranton PA 18505
Landholding Agency: Army
Property Number: 21200840048
Status: Unutilized
Reasons: Secured Area

Puerto Rico

49 Bldgs., Fort Buchanan
Guaynabo Co: PR 00934
Landholding Agency: Army
Property Number: 21200530061–21200530063, 21200610023, 21200620041, 21200830027, 21200840049, 21200920066
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

Samoa

Bldg. 00002, Army Reserve Center
Pago Pago AQ 96799
Landholding Agency: Army
Property Number: 21200810001
Status: Unutilized
Reason: Floodway
Secured Area

South Carolina

43 Bldgs., Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219440237, 219440239, 219620312, 219620317, 219620348, 219620351, 219640138–219640139, 21199640148–21199640149, 219720095, 219720097, 219730130, 219730132, 219730145–219730157, 219740138, 219820102–219820111, 219830139–219830157, 21200520050, 21200810031, 21200920067
Status: Unutilized
Reason: Extensive deterioration

South Dakota

Bldgs. 00038, 00039
Lewis & Clark USARC
Bismarck SD 58504
Landholding Agency: Army
Property Number: 21200710033
Status: Unutilized
Reasons: Secured Area

Tennessee

89 Bldgs., Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012304–219012309, 219012311–219012312, 219012314, 219012316–219012317, 219012328, 219012330, 219012332, 219012334, 219012337, 219013790, 219140613, 219440212–219440216, 219510025–219510027, 21200230035, 21200310040, 21200320054–21200320073, 21200340056, 21200510042, 21200530064–21200530065, 21200640069–21200640072, 21200710035, 21200740160
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)

57 Bldgs., Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240447–219240449, 21200520051–21200520052, 21200640064–21200640068, 21200740027–21200740029, 21200840051, 21200920068
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

Bldg. Z–183A, Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240783
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

143 Bldgs., Fort Campbell
Ft. Campbell Co: Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200220023, 21200240065, 21200330094–21200330100, 21200430052–2100430054, 21200440057–21200440058, 21200510043, 21200520053–21200520062, 21200540063–21200540069, 21200610024–21200610031, 21200620042–21200620044, 21200620064, 21200710034, 21200840050, 21200920069
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00001, 00003, 00030
John Sevier Range
Knoxville TN 37918
Landholding Agency: Army
Property Number: 21200930021
Status: Excess
Reasons: Extensive deterioration

Texas

20 Bldgs., Lone Star Army Ammunition Plant
Highway 82 West
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219012524, 219012529, 219012533, 219012536, 219012539–219012540, 219012542, 219012544–219012545, 219030337–219030345
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

154 Bldgs., Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 219620827, 21200340062–21200340073
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material)

16 Bldgs., Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219420315–219420327, 219430095–219430097
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

218 Bldgs., Fort Bliss
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Number: 219730160–219730186, 219830161–219830197, 21200310044, 21200320079, 21200340059, 21200540070–21200540073, 21200640073–21200640075, 21200710036, 21200740030, 21200740161, 21200810032, 21200820013, 21200830030–21200830039, 21200840052, 21200920021–21200920023, 21200920071, 21200930022–21200930025
Status: Unutilized
Reason: Extensive deterioration

12 Bldgs., Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200420146, 21200720108–21200720111, 21200810033, 21200920020
Status: Unutilized
Reason: Extensive deterioration

3 Bldgs., Fort Sam Houston
Camp Bullis Co: Bexar TX
Landholding Agency: Army
Property Number: 21200520063, 21200930026
Status: Excess
Reason: Extensive deterioration

Bldg. D5040, Grand Prairie Reserve Complex
Tarrant Co: TX 75051
Landholding Agency: Army
Property Number: 21200620045
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 00002, Denton
Lewisville TX 76102
Landholding Agency: Army
Property Number: 21200810034
Status: Unutilized
Reason: Extensive deterioration

10 Bldgs., Fort Worth
Tarrant TX 76108
Landholding Agency: Army
Property Number: 21200830028–21200830029
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Utah

48 Bldgs., Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 21200620046, 21200640076, 21200710037–21200710041, 21200740162–21200740165, 21200830002, 21200840053
Status: Unutilized
Reason: Secured Area

Bldg. 9307
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219013997
Status: Underutilized
Reason: Secured Area

15 Bldgs.
Deseret Chemical Depot
Tooele UT 84074
Landholding Agency: Army
Property Number: 219820120–219820121, 21200610032–21200610034, 21200620047, 21200720036–21200720037, 21200820075
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldgs. 00259, 00206
Ogden Maintenance Center
Weber Co: UT 84404
Landholding Agency: Army
Property Number: 21200530066
Status: Excess
Reason: Secured Area

Virginia

377 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Landholding Agency: Army
Property Number: 219010833, 219010836, 219010842, 219010844, 219010847–219010890, 219010892–219010912, 219011521–219011577, 219011581–219011583, 219011585, 219011588, 219011591, 219013559–219013570, 219110142–219110143, 219120071, 219140618–219140633, 219220210–219220218, 219230100–219230103, 219240324, 219440219–219440225, 219510032–219510033, 219520037, 219520052, 219530194, 219610607–219610608, 219830223–219830267, 21200020079–21200020081, 21200230038, 21200240071–21200240072, 21200510045–21200510046, 21200740031–21200740032, 21200740169–21200740171, 21200920075, 21200930028–21200930029
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area (Some are extensively deteriorated)

13 Bldgs., Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Landholding Agency: Army
Property Number: 219010834–219010835, 219010837–219010838, 219010840–219010841, 219010843, 219010845–219010846, 219010891, 219011578–219011580
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Latrine, detached structure

101 Bldgs.
U.S. Army Combined Arms Support Command

Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219240107, 219620866–219620876, 219740156, 219830208–219830210, 21199940130, 21200430059–21200430060, 21200620048, 21200630064, 21200640077–21200640080, 21200710042, 21200740033–21200740035, 21200740166, 21200810039–21200810040, 21200820017, 21200830042, 21200840055
Status: Unutilized
Reason: Extensive deterioration (Some are in a secured area.)

56 Bldgs.
Red Water Field Office
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219430341–219430396
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

135 Bldgs., Fort A.P. Hill
Bowling Green Co: Caroline VA 22427
Landholding Agency: Army
Property Number: 21200310058, 21200310060, 21200410069–21200410076, 21200430057, 21200510051, 21200740167, 21200810038, 21200820029–21200820032, 21200830041, 21200840054, 21200920072, 21200930027
Status: Unutilized
Reason: Secured Area, Extensive deterioration

68 Bldgs., Fort Belvoir
Ft. Belvoir Co: Fairfax VA 22060–5116
Landholding Agency: Army
Property Number: 21200130076–21200130077, 21200710043–21200710049, 21200720043–21200720051, 21200810042–21200810043, 21200840056
Status: Unutilized
Reason: Extensive deterioration

101 Bldgs., Fort Eustis
Ft. Eustis Co. VA 23604
Landholding Agency: Army
Property Number: 21200210025–21200210026, 21200740037, 21200740168, 21200810035, 21200820022–21200820027, 21200830043, 21200920074
Status: Unutilized
Reason: Extensive deterioration

59 Bldgs., Fort Pickett
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 21200220087–21200220092, 21200320080–21200320085, 21200620049–21200620052, 21200720042, 21200820015
Status: Unutilized
Reason: Extensive deterioration

9 Bldgs., Fort Story
Ft. Story Co: Princess Ann VA 23459
Landholding Agency: Army
Property Number: 21200310046, 21200810037, 21200830040, 21200920077
Status: Unutilized
Reason: Extensive deterioration

16 Bldgs., Defense Supply Center
Richmond VA 23297
Landholding Agency: Army
Property Number: 21200720038–21200720040, 21200720112, 21200740036, 21200840057, 21200920073
Status: Unutilized
Reason: Secured Area

7 Bldgs., Fort Myer
Ft. Myer VA 22211
Landholding Agency: Army
Property Number: 21200810036, 21200820014, 21200830044
Status: Excess
Reason: Secured Area

Washington

700 Bldgs., Fort Lewis
Ft. Lewis Co: Pierce WA 98433–5000
Landholding Agency: Army
Property Number: 219610006, 219610009–219610010, 219610045–219610046, 219620512–219620517, 219640193, 219720142–219720151, 219810205–219810242, 219820132, 21199910064–21199910078, 21199920125–21199920174, 21199930080–21199930104, 21199940134, 21200120068, 21200140072–21200140073, 21200210075, 21200220097, 21200330104–21200330106, 21200430061, 21200620053–21200620059, 21200630067–21200630069, 21200640087–21200640090, 21200740172, 21200820076, 21200840059, 21200920078
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. HBC07, Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740166
Status: Unutilized
Reason: Extensive deterioration

Bldg. 415, Fort Worden
Port Angeles Co: Clallam WA 98362
Landholding Agency: Army
Property Number: 21199910062
Status: Excess
Reason: Extensive deterioration

Bldg. U515A, Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920124
Status: Excess
Reason: gas chamber

Bldgs. 02401, 02402
Vancouver Barracks Cemetery
Vancouver Co: WA 98661
Landholding Agency: Army
Property Number: 21200310048
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs. Renton USARC
Renton Co: WA 98058
Landholding Agency: Army
Property Number: 21200310049
Status: Unutilized
Reason: Extensive deterioration

Wisconsin

5 Bldgs., Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011209–219011210, 219011217
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

153 Bldgs., Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011104, 219011106, 219011108–219011113, 219011115–219011117, 219011119–219011120, 219011122–219011139, 219011141–219011142, 219011144, 219011148–219011208, 219011213–219011216, 219011218–219011234, 219011236, 219011238, 219011240, 219011242, 219011244, 219011247, 219011249, 219011251, 219011256, 19011259, 219011263, 219011265, 219011268, 219011270, 219011275, 219011277, 219011280, 219011282, 219011284, 219011286, 219011290, 219011293, 219011295, 219011297, 219011300, 219011302, 219011304–219011311, 219011317, 219011319–219011321, 219011323
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

4 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013871–219013873, 219013875
Status: Underutilized
Reason: Secured Area

906 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013876–219013878, 219210097–219210099, 219220295–219220311, 219510065, 219510067, 219510069–219510077, 219740184–219740271, 21200020083–21200020155, 21200240074–21200240080
Status: Unutilized
Reason: (Most are in a secured area), (Most are within 2000 ft. of flammable or explosive material), (Some are extensively deteriorated)

3 Bldgs. Fort McCoy
Monroe WI 54656
Landholding Agency: Army
Property Number: 21200930030
Status: Unutilized
Reason: Extensive deterioration

Land (by State)

Indiana

Newport Army Ammunition Plant
East of 14th St. & North of S. Blvd.
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219012360
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Maryland

Approx. 1 acre
Fort Meade
Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 21200740017
Status: Unutilized
Reasons: Other—no public access

RNWYA, Aberdeen Proving Ground
Harford MD
Landholding Agency: Army
Property Number: 21200820143
Status: Unutilized

Reason: Within airport runway clear zone

Landa/Lande
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200920046–21200920047
Status: Unutilized
Reasons: Secured Area

Minnesota

Portion of R.R. Spur
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112
Landholding Agency: Army
Property Number: 219620472
Status: Unutilized
Reason: landlocked

New Jersey

Land
Armament Research Development & Eng. Center
Route 15 North
Picatinny Arsenal Co: Morris NJ 07806–
Landholding Agency: Army
Property Number: 219013788
Status: Unutilized
Reason: Secured Area

Spur Line/Right of Way
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219530143
Status: Unutilized
Reason: Floodway

2.0 Acres, Berkshire Trail
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910036
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Tennessee

Sites #1,#2,#3
Fort Campbell
Christian TN 42223
Landholding Agency: Army
Property Number: 21200920070
Status: Unutilized
Reasons: Secured Area

Texas

Land—Approx. 50 acres
Lone Star Army Ammunition Plant
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219420308
Status: Unutilized
Reason: Secured Area

Virginia

Site #1, Fort Lee
Prince George VA 23801
Landholding Agency: Army
Property Number: 21200920076
Status: Unutilized
Reasons: Secured Area

[FR Doc. E9–19792 Filed 8–20–09; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Friday,
August 21, 2009

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 91, and 141

Pilot, Flight Instructor, and Pilot School Certification; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 91, and 141

[Docket No. FAA–2006–26661; Amendment Nos. 61–124, 91–309, and 141–12]

RIN 2120–AI86

Pilot, Flight Instructor, and Pilot School Certification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule revises the training, qualification, certification, and operating requirements for pilots, flight instructors, ground instructors, and pilot schools. These changes are needed to clarify, update, and correct our existing regulations. These changes are intended to update and clarify the training and qualifications rules for pilots, flight instructors, ground instructors, and pilot schools to ensure a better understanding of these rules that relate to aircraft operations in the National Airspace System.

DATES: This final rule is effective October 20, 2009.

FOR FURTHER INFORMATION CONTACT: John D. Lynch, Certification and General Aviation Operations Branch, AFS–810, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3844; e-mail to *john.d.lynch@faa.gov*. For legal interpretative questions about this final rule, contact: Michael Chase, AGC–240, Office of Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3110; e-mail to *michael.chase@faa.gov*.

Executive Summary

The Federal Aviation Administration (FAA) is amending several regulations to further our safety mission, incorporate international flight standards, and respond to recent technological advances in aviation. The essence of these interlocking changes is pilot, flight instructor, and pilot school certification. The instruction and training taking place in pilot schools is for many their first exposure to recent aviation, technological, and industry changes. For the above reasons, the FAA has found it necessary to update, correct, and clarify our rules and requirements for pilots, flight instructor, and pilot school certification. Many of our changes reflect and incorporate comments and suggestions made by trade organizations, flight schools, manufacturers, individual pilots, and others.

On February 7, 2007, the FAA published the notice of proposed rulemaking (NPRM) for airmen certification entitled ''Pilots, flight instructors, ground instructors, and pilot schools; training, certification, and operating requirements'' (Notice No. 06–20; 72 FR 5806–5854). The NPRM follows an earlier final rule amending the pilot and flight instructor certification, training, and experience rules of part 61 (*See* 62 FR 16220; April 4, 1997). Since the 1997 final rule, we determined changes were needed to clarify and refine these regulations and address problems discovered post-publication. We also received a number of helpful comments and interpretation requests from the pilot, flight instructor, and training community. In order to make our rule revisions more comprehensive, the NPRM included changes to 14 CFR part 91 and part 141 appendices.

We made two significant proposals in the NPRM: The first one details pilot and flight instructor training and qualifications for night vision goggle (NVG) operations; and, the second one converts military flight instructor training experience to civilian teaching. We also made a number of other changes reflected in the following table and discussed in the rule preamble.

The FAA received considerable public response to the NPRM. We received 1,970 different comments from 231 commenters. These commenters represented a diverse ''cross-section'' of the aviation community including: Commenters who identified themselves as actively serving in the United States Armed Forces or Armed Forces Reserves; flight schools (commercial and educational), flight training facilities, or other organizations associated with flight training; aircraft manufacturers or aircraft manufacturer associations, pilot, aircraft, and helicopter owner associations; civil aviation associations; and law enforcement agencies or organizations associated with NVG operations. The substantive comments on both the overarching issues and specific rule changes are detailed in the ''General Comments'' and ''Editorial Comments'' sections of this preamble.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, § 106 describes the authority of the FAA Administrator, including the authority to issue, rescind, and revise regulations. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Chapter 447—Safety Regulation. Under § 44701, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations necessary for safety. Under § 44703, the FAA issues an airman certificate to an individual when we find, after investigation, that the individual is qualified for, and physically able to perform the duties related to, the position authorized by the certificate. In this final rule, we are amending certain training, qualification, certification, and operating requirements for pilots, flight instructors, ground instructors, and pilot schools.

These revisions are intended to ensure that flight crewmembers have the training and qualifications to enable them to operate aircraft safely. For this reason, these revisions are within the scope of our authority and are a reasonable and necessary exercise of our statutory obligations.

Summary Table on the Revisions

The table below is a listing of the changes that are contained in this final rule in order of their Code of Federal Regulations (CFR) designations. The table is organized as follows: The first column, identified as ''Revision No.,'' refers to the paragraph number in the ''Description of Revision'' portion of this preamble where a detailed discussion of the revision appears. The second column gives the CFR designation of the regulation we are revising. The third column, identified as ''Summary of the Revisions,'' provides a brief summary of the revision.

This final rule revises and makes clarifications under part 61 that pertain to pilot, flight instructor, and ground instructor certification requirements. This final rule revises § 91.205(h) which is the rule that establishes the required instruments and equipment for use in NVG operations. This final rule also revises part 141 and its appendixes, which apply to part 141 approved pilot schools and provisional pilot schools.

Revision No.	CFR designation	Summary of the revisions
1	§ 61.1(b)(12)	Adds a definition for the term ''night vision goggles.''
2	§ 61.1(b)(13)	Adds a definition for the term ''night vision goggle operations.''
3	§ 61.2	Establishes the requirements regarding ''currency'' and ''validity'' in a new § 61.2 as it relates to exercising the privileges of an airman certificate, rating, endorsement, or authorization.
4	§ 61.3(j)(1)	This proposal to delete the phrase ''Except as provided in paragraph (j)(3) of this section'' is being withdrawn as the ''Part 121 Pilot Age Limit'' direct final rule has incorporated this proposal and has also increased the age requirement to 65 years for pilots engaged in part 121 air carrier operations.
4	§ 61.3(j)(3)	We had proposed to delete this provision because the dates have passed. However, this proposal has been withdrawn as the ''Part 121 Pilot Age Limit'' direct final rule has overtaken the need for this proposed change.
5	§ 61.19(b)	Extends the duration period for student pilot certificates for persons under the age of 40 years.
6	§ 61.19(b)(3)	Extends the duration period for student pilot certificates for persons seeking the glider or balloon rating to 60 calendar months, regardless of the age of the person.
7	§ 61.19(d)	The NPRM proposed to issue flight instructor certificates without expiration dates. The FAA has decided to withdraw this proposal and will continue to issue flight instructor certificates with an expiration date.
8 & 81	§ 61.19(e)	Parallels the ground instructor certificate duration with the ground instructor currency requirements in revised § 61.217.
9	§ 61.23(a)(3)(iv)–(v)	Makes minor editorial changes to the medical certificate requirements.
9	§ 61.23(a)(3)(vii)	Permits Examiners to hold only a third class medical certificate as already provided for in FAA Order 8900.2.
10	§ 61.23(b)(3)	Clarifies that persons who are exercising the privileges of their pilot certificate when operating a balloon or a glider are not required to hold a medical certificate.
11	§ 61.23(b)(7)	Clarifies that Examiners who administer practical tests in a glider, balloon, flight simulator, or flight training device are not required to hold a medical certificate.
12	§ 61.23(b)(8)	Clarifies that no medical certificate is required when taking a practical test in a glider, balloon, flight simulator, or flight training device.
13	§ 61.23(b)(9)	Adds a provision that excuses U.S. military pilots from obtaining an FAA medical certification, if they hold an ''up-to-date'' medical clearance from the U.S. Armed Forces, and the flight only requires privileges of a third class medical certificate and is conducted within U.S. airspace.
14	§ 61.29(d)(3)	Deletes the requirement that a person furnish his/her Social Security Number.
15	§ 61.31(d)(1), (2), & (3)	Corrects a duplication of provisions between paragraphs (d)(2) and (3).
16	§ 61.31(k)	Establishes training for operating with night vision goggles in a new paragraph (k).
17	§ 61.35(a)(2)(iv)	Clarifies when a person must show his/her current residential address when making application for a knowledge test.
18	§ 61.39(b)(2)	Deletes the word ''scheduled'' in front of the phrase ''U.S. military air transport operations.''
19	§ 61.39(c)(2)	Deletes the exception that an applicant does not have to receive an instructor endorsement for an additional aircraft class rating. Sections 61.39(a)(6) and 61.63(c) require an instructor endorsement.
20	§ 61.39(a)(6)(i), (d) and (e)	Changes the phrase ''60 calendar days'' to read ''2 calendar months'' for the training required prior to the practical test.
21	§ 61.43(a) and (b)	Clarifies when single pilot performance is required on the practical test versus permitting issuance of the ''second in command'' limitation.
22	§ 61.45(a)(2)(iii)	Defines a military aircraft for the purpose of using it for a practical test.
23	§ 61.45(c)	Excepts gliders that are unpowered from the requirement that aircraft used for a practical test must have engine power controls and flight controls that are easily reached and operable in a conventional manner by both pilots.
24	§ 61.51(b)(3)(iv)	Adds a provision for logging night vision goggle time.
27	§ 61.51(b)(1)(iv) § 61.51(b)(2)(v) § 61.51(b)(3)(iii)	Revises the instructions for logbook entries to include aviation training device (ATD).
25	§ 61.51(e)(1)	Corrects an omission and permits sport pilots and airline transport pilots (ATPs) to log pilot in command (PIC) flight time.
26	§ 61.51(e)(1)(iv)	Permits a pilot who is performing the duties of PIC while under the supervision of a qualified PIC to log PIC flight time.
27	§ 61.51(g)(4)	Requires that when using a flight simulator, flight training device, or an ATD for training, an instructor must be present and sign the person's logbook or training record.
28	§ 61.51(j)	Establishes that an aircraft must hold an airworthiness certificate, with some exceptions, for a pilot to log flight time to meet the certificate, rating, or recent flight experience requirements under part 61.
29	§ 61.51(k)	Adds the criteria and standards for logging night vision goggle time.
30	§ 61.57(c)(1)	In the NPRM, we had proposed to revise the instrument recent flight experience for maintaining instrument privileges in airplanes, powered-lifts, helicopters, and airships. The FAA has decided to maintain the existing instrument recency requirements and just make formatting and editorial revisions to the rule.
30	§ 61.57(c)(2)–(5)	Permits the use of flight simulators, flight training devices, or ATDs for performing instrument recent flight experience.
30	§ 61.57(c)(6)	Revises the instrument recent flight experience for maintaining instrument privileges in gliders.

Revision No.	CFR designation	Summary of the revisions
31	§ 61.57(d)	Clarifies when an instrument proficiency check must be completed to serve as the PIC under IFR or in weather conditions less than the minimums prescribed for VFR.
32	§ 61.57(f)	Adds a night vision goggle recent operating experience requirement to remain PIC qualified for night vision goggle operations.
33	§ 61.57(g)	Adds a night vision goggle proficiency check requirement to remain PIC qualified for night vision goggle operations.
34	§ 61.59(a)–(b)	The FAA has decided to withdraw this proposal that would have paralleled this section with the language contained in § 67.403 of this chapter.
35	§ 61.63	Changes the section heading to read ''Additional aircraft ratings (other than for ratings at the airline transport pilot certificate level).''
35	§ 61.63(c)(4)	Clarifies what is intended for those applicants who hold only a lighter than air (LTA)-Balloon rating and who seek a LTA-Airship rating.
35	§ 61.63(d)(5)	Adds a provision to account for aircraft not capable of instrument flight. Parallels revised § 61.157(b)(3).
35	§ 61.63(e)	Amends the requirement for permitting use of aircraft not capable of instrument flight for a rating. Parallels revised § 61.157(g).
35	§ 61.63(f)	Clarifies that an applicant for type rating in a multiengine, single seat airplane must meet the requirements in the multi-seat version of that type airplane, or the examiner must be in a position to observe the applicant during the practical test. Parallels revised § 61.157(h).
35	§ 61.63(g)	Clarifies that an applicant for type rating in a single engine, single seat airplane may meet the requirements in a multi-seat version of that type airplane, or the examiner must be in a position to observe the applicant during the practical test. Parallels revised § 61.157(i).
36	§ 61.64	Places the existing § 61.63(e), (f), and (g) and § 61.157(g), (h), and (i) that address the requirements for using flight simulators and flight training devices into revised § 61.64.
35	§ 61.63(h)	Clarifies that certain tasks may be waived if the FAA has approved the task to be waived to parallel § 61.157(m).
36	§ 61.64(a) and (b)	Moves § 61.63(e) and § 61.157(g) to revised § 61.64. Simplifies and amends the requirements and limitations for use of a flight simulator or flight training device for an airplane rating.
36	§ 61.64(a)(2)(i) & (ii)	Clarifies that to use a flight simulator for training and testing for the airplane category, class, or type rating, the type rating cannot contain the supervised operating experience limitation.
36	§ 61.64(c) and (d)	Moves § 61.63(f) and § 61.157(h) to revised § 61.64. Simplifies and amends the requirements and limitations for use of a flight simulator or flight training device for a helicopter rating.
36	§ 61.64(c)(2)(i) & (ii)	Clarifies that to use a flight simulator for training and testing for the helicopter class or type rating, the type rating cannot contain the supervised operating experience limitation.
36	§ 61.64(e) and (f)	Moves § 61.63(g) and § 61.157(i) to revised § 61.64. Simplifies and amends the requirements and limitations for use of a flight simulator or flight training device for a powered-lift rating.
36	§ 61.64(e)(2)(i) & (ii)	Clarifies that to use a flight simulator for training and testing for the powered-lift category or type rating, the type rating cannot contain the supervised operating experience limitation.
37	§ 61.65(d)	For an airplane, requires at least 10 hours of cross country time as PIC, appropriate to the instrument rating sought, so that it conforms to the ICAO requirements for instrument rating.
37	§ 61.65(e)	For a helicopter, requires at least 10 hours of cross country time as PIC, appropriate to the instrument rating sought, so that it conforms to the ICAO requirements for instrument rating.
37	§ 61.65(f)	For a powered-lift, requires at least 10 hours of cross country time as PIC, appropriate to the instrument rating sought, so that it conforms to the ICAO requirements for instrument rating.
37	§ 61.65(g)	Makes minor changes to address the usage of flight simulator and flight training devices for the instrument rating. Re-designate paragraph (e) as paragraph (g).
38	§ 61.65(h)	Permits the use of an ATD to be used for 10 hours of instrument time.
39	§ 61.69(a)(4)	Corrects a typographical error involving the word ''or.''
40	§ 61.69(a)(6)	Increases the recent flight experience requirements for tow pilots from 12 months to 24 months.
41	§ 61.73(b)	Removes the requirement that military pilots and former military pilots be on active flying status within the past 12 months to qualify under these special rules. Deletes the requirement that military pilots and former military pilots have PIC status to qualify for pilot certification under these special rules. Also, makes minor editorial changes.
41	§ 61.73(c)	Allows military pilots of an Armed Force of a foreign contracting State to International Civil Aviation Organization (ICAO) to qualify for U.S. Commercial Pilot Certificates and ratings provided they are assigned in an operational U.S. military unit for other than flight training purposes.
41	§ 61.73(f)	Re-designates paragraph (g) as paragraph (f) and deletes the phrase ''as pilot in command during the 12 calendar months before the month of application.''
42	§ 61.73(g) § 61.197(a)(2)(iv)	Allows issuance of flight instructor certificates and ratings to military instructor pilots and examiners who can show having been designated as a U.S. military instructor pilot or examiner. Provides an alternative method for U.S. military instructor pilots and examiners who hold an FAA flight instructor certificate to renew their flight instructor certificate and ratings.

Revision No.	CFR designation	Summary of the revisions
43	§ 61.73(h)	Clarifies the documents required to qualify military pilots for a pilot certificate and ratings under the special rules of § 61.73 for military pilots.
44	§ 61.75(a)	Requires a holder of a foreign pilot license to have at least a foreign private pilot license in order to apply for a U.S. private pilot certificate under § 61.75.
44	§ 61.75(b)	Requires a holder of a foreign pilot license to have at least a foreign private pilot license in order to apply for a U.S. private pilot certificate under § 61.75.
45	§ 61.75(b)(3)	Adds ''other than a U.S. student pilot certificate.''
46	§ 61.75(c)	Adds the qualifier ''for private pilot privileges only'' to clarify issuance of U.S. private pilot certificates based on foreign pilot licenses.
3	§ 61.75(d)	Adds the qualifier ''valid.''
47	§ 61.75(e)	Corrects an error: Where the rule stated ''U.S. private pilot certificate,'' it has been corrected to read: ''U.S. pilot certificate.''
47	§ 61.75(e)(1)	Corrects an error: Where the rule stated ''private pilot privilege,'' it has been corrected to read: ''pilot privileges authorized by this part and the limitations placed on that U.S. pilot certificate.''
47	§ 61.75(e)(4)	Corrects an error: Where the rule stated ''U.S. private pilot certificate,'' it has been corrected to read: ''U.S. pilot certificate.''
47	§ 61.75(f)	Corrects an error: Where the rule stated ''U.S. private pilot certificate,'' it has been corrected to read: ''U.S. pilot certificate'' in 2 places.
47	§ 61.75(g)	Corrects an error: Where the rule stated ''U.S. private pilot certificate,'' it has been corrected to read: ''U.S. pilot certificate'' in 2 places.
48	§ 61.77(a)(2)	Clarifies who can be issued a special purpose pilot authorization.
48	§ 61.77(b)(1)	Clarifies the requirements for issuance of a special purpose pilot authorization.
48	§ 61.77(b)(5)	Deletes a requirement that an applicant have documentation of meeting the recent flight experience requirements of part 61 be issued a special purpose pilot authorization.
49	§ 61.96(b)(9)	Requires an applicant for a recreational pilot certificate to hold either a student pilot certificate or sport pilot certificate.
50	§ 61.101(e)(1)(iii) and (j)	Excludes aircraft that are certificated as rotorcraft from the 180 horsepower powerplant limitation. Corrects a mistake in paragraph (j) that references ''paragraph (h)'' where the rule should reference ''paragraph (i).''
51	§ 61.103(j)	Requires a private pilot certificate applicant to hold a student pilot certificate, recreational pilot certificate, or sport pilot certificate.
52	§ 61.109(a)(5)(ii)	Changes the distance on a cross country flight for private pilot certification—single engine airplane rating from ''at least 50 nautical miles'' to ''more than 50 nautical miles.''
52	§ 61.109(b)(5)(ii)	Changes the distance on a cross country flight for private pilot certification—multiengine airplane rating from ''at least 50 nautical miles'' to ''more than 50 nautical miles.''
53	§ 61.109(c)(4)(ii)	Changes the distance on the solo cross country flight for private pilot certification—helicopter rating to conform to ICAO requirements. Changes the distance on a cross country flight for private pilot certification—helicopter rating from ''at least 25 nautical miles'' to read ''more than 25 nautical miles.''
54	§ 61.109(d)(4)(ii)	Changes the distance on the solo cross country flight for private pilot certification—gyroplane rating to conform to ICAO requirements. Changes the distance on a cross country flight for private pilot certification—gyroplane rating from ''at least 25 nautical miles'' to read ''more than 25 nautical miles.''
52	§ 61.109(e)(5)(ii)	Changes the distance on a cross country flight for private pilot certification—powered-lift rating from ''at least 50 nautical miles'' to ''more than 50 nautical miles.''
55	§ 61.127(b)(4)(vi)	Adds ''ground reference maneuvers'' as an area of operation for commercial pilot certification—gyroplane rating.
56	§ 61.127(b)(5)(vii)	Deletes ''ground reference maneuvers'' for commercial pilot certification powered lift rating.
57	§ 61.129(a)(3)(i)	Clarifies the instrument training tasks required for commercial pilot certification—airplane single engine rating by requiring training using a view-limiting device.
62	§ 61.129(a)(3)(iii)	Allows the daytime cross country flight for commercial pilot certification single engine airplane rating to be performed under visual flight rules (VFR) or instrument flight rules (IFR).
62	§ 61.129(a)(3)(iv)	Allows the cross country flight at nighttime for commercial pilot certification airplane single engine rating to be performed under VFR or IFR.
64	§ 61.129(a)(4)	Permits training to be performed solo or with an instructor onboard for commercial pilot certification—airplane single engine rating.
58	§ 61.129(b)(3)(i)	Requires instrument training tasks for commercial pilot certification airplane multiengine rating to include training using a view-limiting device.
62	§ 61.129(b)(3)(iii)	Allows the daytime cross country flight for commercial pilot certification multiengine airplane rating to be performed under VFR or IFR.
62	§ 61.129(b)(3)(iv)	Allows the cross country flight at nighttime for commercial pilot certification multiengine airplane rating to be performed under VFR or IFR.
59	§ 61.129(c)(3)(i)	Reduces the hour requirements on the control and maneuvering of a helicopter solely by reference to instruments from 10 hours to 5 hours for commercial pilot certification—helicopter rating and permits it to be performed in an aircraft, flight simulator, or flight training device. Clarifies the control and maneuvering of a helicopter solely by reference to instruments required for commercial pilot certification for the helicopter rating must include training using a view-limiting device.
62	§ 61.129(c)(3)(ii)	Permits the daytime cross country flight for commercial pilot certification helicopter rating to be performed under VFR or IFR.

Revision No.	CFR designation	Summary of the revisions
62	§ 61.129(c)(3)(iii)	Permits the cross country flight at nighttime for commercial pilot certification helicopter rating to be performed under VFR or IFR.
64	§ 61.129(c)(4)	Permits training for commercial pilot certification helicopter rating to be performed solo or with an instructor onboard.
60	§ 61.129(d)(3)(i)	Reduces the instrument training for commercial pilot certification—gyroplane rating to 2.5 hours on the control and maneuvering of a gyroplane solely by reference to instrument and permits it to be conducted in an aircraft, flight simulator, or flight training device. Clarifies the control and maneuvering of a gyroplane solely by reference to instrument required for commercial pilot certification gyroplane rating must include training using a view-limiting device.
62	§ 61.129(d)(3)(ii)	Allows the daytime cross country flight for commercial pilot certification gyroplane rating to be performed under VFR or IFR.
63	§ 61.129(d)(3)(iii)	Deletes the requirement for a cross country flight at nighttime for commercial pilot certification gyroplane rating and establishes it as ''At least two hours of flight training during nighttime conditions in a gyroplane at an airport, that includes 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern).''
64	§ 61.129(d)(4)	Permits training for commercial pilot certification gyroplane rating to be performed solo or with an instructor onboard.
61	§ 61.129(e)(3)(i)	Requires that instrument training tasks for commercial pilot certification powered-lift rating include training using a view-limiting device.
61	§ 61.129(e)(3)(ii)	Permits the cross country flight at nighttime for commercial pilot certification powered-lift rating to be performed under VFR or IFR.
62	§ 61.129(e)(3)(iii)	Permits the cross country flight at nighttime for commercial pilot certification powered-lift rating to be performed under VFR or IFR.
64	§ 61.129(e)(4)	Permits training for commercial pilot certification powered-lift rating to be performed solo or with an instructor onboard.
64	§ 61.129(g)(2)	Permits training for commercial pilot certification airship rating to be performed either solo or while performing the duties of PIC with an instructor onboard.
65	§ 61.129(g)(3)	Reformats paragraph (3) into subparagraphs (i) and (ii). Clarifies that the instrument training tasks for commercial pilot certification airship rating requires instrument training using a view-limiting device.
62	§ 61.129(g)(4)(ii) & (iii)	Permits the cross country training for commercial pilot certification airship rating to be performed under VFR or IFR.
66	§ 61.153(d)(3)(i), (ii)	Further clarifies the additional condition to qualify for a U.S. ATP certificate on the basis of a foreign pilot certificate.
67	§ 61.157	Reprints this section in its entirety due to numerous editorial, formatting, and technical revisions.
67	§ 61.157(b)	Adds the language ''or a type rating that is completed concurrently with an airline transport pilot certificate'' for clarification purposes. Reformats this section to establish a paragraph (g) that permits the use of an aircraft not capable of instrument flight for a type rating to be added to an existing ATP certificate. This revision parallels the changes in § 61.63(e).
67	§ 61.157(f)(1)(ii)	Clarifies the aeronautical knowledge areas of the competency check under § 135.293 for qualifying for an aircraft rating. The reason for this change is because Part 142 training centers and designated pilot examiners are only authorized to test an applicant on the aeronautical knowledge areas of § 135.293(a)(2) and (3) and not on the aeronautical knowledge areas of § 135.293(a)(1) and (4) through (8). Procedurally, the FAA only permits the part 135 operator's check airman and FAA Inspectors to test the applicant on the aeronautical knowledge areas of § 135.293(a)(1) and (4) through (8).
36 & 67	§ 61.157(g)	Clarifies the use of flight simulators and flight training devices and applicant qualifications for the airplane rating at the ATP certification level and moves it in to § 61.64 in paragraph (a) and (b).
36 & 67	§ 61.157(h)	Clarifies the use of flight simulators and flight training devices and applicant qualifications for the helicopter rating at the ATP certification level and moves it into § 61.64 in paragraph (c) and (d).
36 & 67	§ 61.157(i)	Clarifies the use of flight simulators and flight training devices and applicant qualifications for the powered-lift rating at the ATP certification level and moves it into § 61.64 as paragraph (e) and (f).
68	§ 61.157(g)	Re-designates paragraph (j) as paragraph (g). Amends the requirements for permitting use of aircraft not capable of instrument flight for a rating to permit the issuance of a ''VFR Only'' limitation for ATP certification. This revision parallels the changes in § 61.63(e).
68	§ 61.157(h)	Adds a provision to permit an applicant for type rating in a multiengine, single seat airplane to be performed in a multi-seat version of that type airplane, or the examiner must be in a position to observe the applicant during the practical test. This revision parallels the changes in § 61.63(f).
69	§ 61.157(i)	Adds a provision permitting an applicant for type rating in a single engine, single seat airplane to be performed in a multi-seat version of that type airplane, or the examiner must be in a position to observe the applicant during the practical test. This revision parallels the changes in § 61.63(g).
70	§ 61.159(c)(3)	Adds a provision to accommodate the crediting of flight engineer time for U.S. military flight engineers for qualifying for an ATP certificate that is similar to what is provided for crediting flight engineer time under part 121.
71	§ 61.159(d)	Clarifies when an applicant may be issued an ATP certificate with the ICAO endorsement.

Revision No.	CFR designation	Summary of the revisions
71	§ 61.159(e)	Clarifies a holder of an ATP certificate with the ICAO endorsement may have the endorsement removed after meeting the aeronautical experience of revised § 61.159(d).
72	§ 61.187(b)(6)(vii)	Deletes the ''go around maneuver'' for flight instructor certification for the glider rating.
73	§ 61.195(c)(1) & (2)	Establishes the flight instructor qualifications for providing instrument training in flight to be a CFII in the appropriate category and class of aircraft.
74	§ 61.195(d)(3)	Deletes requirement that a flight instructor must sign a student's certificate for authorizing solo flight in Class B airspace.
75	§ 61.195(k)	Adds flight instructor qualifications for giving the PIC night vision goggle qualification and currency training.
7	§ 61.197(a)(2)	This proposal has been withdrawn, because the FAA has decided to continue to issue flight instructor certificates with an expiration date. The proposal would have established flight instructor renewal procedures without requiring re-issuance of the actual flight instructor certificate.
7	§ 61.199(a)	This proposal would have established flight instructor reinstatement procedures without requiring re-issuance of the actual flight instructor certificate. That proposal has been withdrawn, because the FAA has decided to continue to issue flight instructor certificates with an expiration date. The FAA is making a minor change to this rule to clarify the reinstatement requirements to allow the performance of a single CFI reinstatement practical test renews the other ratings held on that flight instructor certificate.
76	§ 61.215(b)	Deletes the privilege of advance ground instructors (AGIs) to provide training and endorsement for instrument training.
77	§ 61.217(a)–(d)	Establishes new currency requirements for ground instructors.
78	§ 91.205(h)	Establishes the required instruments & equipment for night vision goggle operations.
79	§ 141.5(a)–(e)	Clarifies that the ''counters'' for the pass rate must be 10 different people and that no one graduate can be counted more than once.
80	§ 141.9	Corrects the rule language for issuing examining authority.
81	§ 141.33(d)(2)	Reduces the number of student enrollments to qualify for a check instructor position to 10 students.
82	§ 141.39	Permits the use of foreign registered aircraft for those part 141 training facilities that are located outside of the United States and where the training is conducted outside of the United States.
83	§ 141.53(c)(1)	Deletes subparagraph (c)(1) to remove an obsolete date.
84	§ 141.55(e)(2)(ii)	Corrects the phrase ''the practical or knowledge test, or any combination thereof'' to read ''the practical or knowledge test, as appropriate.''
85	§ 141.77(c)(1), (2), and (3)	Makes a technical correction to the language in the rules about the proficiency and knowledge test required for transfer students to a part 141 pilot school.
86	§ 141.85(a)(1) & (d)	Clarifies duties and responsibilities that chief instructor may delegate to an assistant chief instructor and recommending instructor.
87	Part 141, Appx. B. para. 2	Changes the eligibility requirement for enrollment into the flight portion of the private pilot certification course to only require a recreational, sport, or student pilot certificate prior to entry into the solo phase of the flight portion of the course.
88	Part 141, Appx. B. para. 4(b)(1)(i).	Corrects in the private pilot certification single engine airplane course requirement by changing the training required to read ''on the control and maneuvering of a single engine airplane solely by reference to instruments'' instead of calling it ''instrument training.''
88	Part 141, Appx. B. para. 4(b)(2)(i).	Corrects the private pilot certification multiengine airplane course requirement by changing the training required to read ''on the control and maneuvering of a multiengine airplane solely by reference to instruments.''
88	Part 141, Appx. B. para. 4(b)(5)(i).	Corrects the private pilot certification powered-lift course requirement by changing the training required to read ''on the control and maneuvering of a powered-lift solely by reference to instruments.''
89	Part 141, Appx. B. para. 5(a)(1)	Changes the distance for the cross country flight in the private pilot certification—airplane single engine course from ''at least 50 nautical miles'' to read ''more than 50 nautical miles.''
90	Part 141, Appx. B. para. 5(b)(1)	Changes the distance on a cross country flight in the private pilot certification—airplane multiengine course from ''at least 50 nautical miles'' to read ''more than 50 nautical miles.''
91	Part 141, Appx. B. para. 5(c)(1)	Changes the distance on a cross country flight in the private pilot certification helicopter course to conform to ICAO requirements to be a cross country flight of at least 100 nautical miles. Changed the phrase ''at least 25 nautical miles'' to read ''more than 25 nautical miles.''
92	Part 141, Appx. B. para. 5(d)(1)	Changes the distance on a cross country flight in the private pilot certification—gyroplane course from ''at least 25 nautical miles'' to read ''more than 25 nautical miles.''
93	Part 141, Appx. B. para. 5(e)(1)	Changes the distance on a cross country flight in the private pilot certification—powered lift course from ''at least 50 nautical miles'' to read ''more than 50 nautical miles.''
94	Part 141, Appx. C. para. 4(b)(5) & (6).	Allows approval of instrument rating courses that give credit for instrument training on an ATD.
100	Part 141, Appx. D. para. 4(b)(1)(i).	Requires that the instrument training tasks for the commercial pilot certification airplane single engine course include training using a view-limiting device.
99	Part 141, Appx. D. para. 4(b)(1)(ii).	Allows the complex airplane training in the commercial pilot certificate single engine airplane course to be performed in either in a single engine complex airplane or multiengine complex airplane.

Revision No.	CFR designation	Summary of the revisions
96	Part 141, Appx. D. para. 4(b)(1)(iii).	Allows the daytime cross country flight for the commercial pilot certificate airplane course to be performed under VFR or IFR.
96	Part 141, Appx. D. para. 4(b)(1)(iv).	Allows the nighttime cross country flight for the commercial pilot certificate airplane course to be performed under VFR or IFR.
96	Part 141, Appx. D. para. 4(b)(2)(i).	Requires that the instrument training tasks for the commercial pilot certification airplane multiengine course include training using a view-limiting device.
96	Part 141, Appx. D. para. 4(b)(2)(iii).	Allows the daytime cross country flight for the commercial pilot certificate airplane course to be performed under VFR or IFR.
96	Part 141, Appx. D. para. 4(b)(2)(iv).	Allows the nighttime cross country flight for the commercial pilot certificate airplane course to be performed under VFR or IFR.
100	Part 141, Appx. D. para. 4(b)(3)(i).	Requires that the instrument training tasks for the commercial pilot certification helicopter course include using a view-limiting device.
96	Part 141, Appx. D. para. 4(b)(3)(ii).	Allows the daytime cross country flight in the commercial pilot certificate helicopter course to be performed under VFR or IFR.
96	Part 141, Appx. D. para. 4(b)(3)(iii).	Allows the nighttime cross country flight in the commercial pilot certificate helicopter course to be performed under VFR or IFR.
100	Part 141, Appx. D. para. 4(b)(4)(i).	Requires that the instrument training tasks for the commercial pilot certification gyroplane course include using a view-limiting device.
96	Part 141, Appx. D. para. 4(b)(4)(ii).	Allows the daytime cross country flight in the commercial pilot certificate gyroplane course to be performed under VFR or IFR.
97	Part 141, Appx. D. para. 4(b)(4)(iii).	Requires a nighttime cross country flight in the commercial pilot certificate gyroplane course to include at least two hours of flight training during nighttime conditions at an airport, that includes 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern).
100	Part 141, Appx. D. para. 4(b)(5)(i).	Requires that the instrument training tasks for the commercial pilot certification powered-lift course include using a view-limiting device.
96	Part 141, Appx. D. para. 4(b)(5)(ii).	Allows the daytime cross country flight in the commercial pilot certificate powered-lift course to be performed under VFR or IFR.
96	Part 141, Appx. D. para. 4(b)(5)(iii).	Allows the nighttime cross country flight in the commercial pilot certificate powered-lift course to be performed under VFR or IFR.
100	Part 141, Appx. D. para. 4(b)(7)(i).	Requires that the instrument training tasks for the commercial pilot certification airship course include using a view-limiting device.
96	Part 141, Appx. D. para. 4(b)(7)(ii).	Allows the daytime cross country flight in the commercial pilot certificate airship rating course to be performed under VFR or IFR.
96	Part 141, Appx. D. para. 4(b)(7)(iii).	Allows the nighttime cross country flight in the commercial pilot certificate airship rating course to be performed under VFR or IFR.
98	Part 141, Appx. D. para. 4(d)(4)(vi).	Adds ''ground reference maneuvers'' as an area of operation for the gyroplane rating in the commercial pilot certificate course.
95	Part 141, Appx. D. para. 5(a), (c), (d), & (e).	Allows training to be performed solo or with an instructor onboard for the commercial pilot certificate courses.
101	Part 141, Appx. E. para. 2	Clarifies that a person prior to having completed the flight portion of the ATP course must have met the ATP aeronautical experience requirements of part 61, subpart G.
102	Part 141, Appx. I. para. 3 and 4	Clarifies the amount and content of ground and flight training for the add-on aircraft category and/or class rating courses in the recreational, private, commercial, and ATP certification courses.

Differences Between NPRM and Final Rule

The notice of proposed rulemaking (NPRM) generated considerable interest and commentary by the pilot, flight instructor, and flight school community as well as other stakeholders. While the FAA is appreciative of all comments, recommendations, and suggestions made during NPRM period, they are not always related to the instant final rule.

The FAA received general comments on aviation industry future trends. Comments on cockpit resource management (CRM) and general aviation (GA) trends, including very light jet (VLJ), will be addressed in other FAA rulemakings.

In response to several comments that rule changes would result in undue recordkeeping burdens for certificate holders and cause new problems such as identity theft, we have explained our requirements and rationale in the preamble of this final rule. We find the revisions will clarify and eliminate duplication of certain sections and, in fact, reduce paperwork. As detailed later in this document, revised § 61.29(d)(3) ends the requirement that a person requesting replacement of a lost or destroyed airman certificate, medical certificate, or knowledge test report must furnish their Social Security Number. The change improves privacy by one less place where a Social Security Number must be furnished and complies with Federal Law that forbids mandating a Social Security Number for identification purposes. The FAA has started a rulemaking process revising the pilot certificate requirements that when exercising the privilege of a pilot certificate, the person must carry photo identification acceptable to the Administrator. This exercise will also address security concerns regarding pilot identification. Details on this rulemaking will appear in the **Federal Register** in due course and comments will be solicited before a final rule is promulgated.

Responding to concerns that the FAA will deny or revoke privileges for inadvertent inaccuracies, based on re-review of § 61.59 we do not find this rule invalidates existing regulatory requirements for recording flight experience. It is not FAA's intention to deny or revoke privileges for inadvertent inaccuracies. In fact, many of the ''e-initiatives'' of FAA, Department of Transportation, and the Federal Government make applications, submission, and corrections easier. At present, a number of processes can be

completed online including the renewal of instructor flight certificates. The FAA has also made numerous editorial changes for clarity.

Editorial Comments

The FAA has made numerous editorial changes referenced by the previous Summary of Revision Table and detailed comments appear by Revision Number (Revision Number or Revision No.). One commenter noted FAA Order 8710.3D referenced in the NPRM, has been superseded by FAA Order 8900.2 and recommended the references be updated. The FAA agrees and the corrected reference ''FAA Order 8900.2'' appears throughout this document.

Discussion of the Final Rule

1. This revision of § 61.1(b)(13) defines the term ''night vision goggles''

Revised § 61.1(b)(13) defines ''night vision goggles'' (NVG) to mean ''an appliance worn by a pilot that enhances the pilot's ability to maintain visual surface reference at night.''

Two commenters supported the proposed definition for night vision goggles. One commenter, while supporting the general concept of defining and addressing night vision goggle operations, thought specific operational details should be left to NVG users.

The FAA is adopting the revision as proposed in the NPRM.

2. This revision of § 61.1(b)(14) defines the term ''night vision goggle operation''

This final rule creates a new § 61.1(b)(14) by defining ''night vision goggle operation'' as ''a flight at night where the pilot maintains visual surface reference utilizing NVGs in an aircraft that is approved for NVG operations.''

One commenter supported the general concept of defining and addressing night vision goggle (NVG) operations, while deferring to NVG users regarding specific details of the proposed provisions. Two commenters objected to the NVG definition on safety grounds. The commenters believed the proposed definition implies visual references to the surface may be maintained solely by NVG use and, in the event of a NVG malfunction, pilots could be left without any visual references.

The FAA does not believe that the definition of ''night vision goggle operation'' would in any way affect safety in the event of a NVG malfunction. Required pilot training should ensure a pilot has the skills and ability to revert to visual flight. Therefore, the FAA is adopting the revision as it was proposed in the NPRM.

3. This revision establishes a new § 61.2 that clarifies the requirements regarding ''currency'' and ''validity'' throughout part 61 as it relates to exercising the privileges of an airman certificate, rating, endorsement, or authorization issued under this part

The FAA had proposed to revise §§ 61.1(b)(2)(i) and (ii), (4), and (20); 61.3(a)(1), (c), (f)(2)(i) and (ii), and (g)(2)(i) and (ii); 61.39(c)(1), 61.69(a)(1); 61.75(b)(2) and (d); 61.77(b)(1); 61.103(j); 61.133(a)(1); 61.153(d)(1) and (3); 61.167(a) and (b)(3); the introductory language of 61.193; 61.197(a); and 61.215(a), (b), (c), and (d) to clarify that airman certificates, ratings, and authorizations had to be ''current'' and/or ''valid,'' or both, where and when appropriate. However, the FAA has now decided to remove the words ''current'' and ''valid'' entirely throughout part 61. This new § 61.2 establishes the requirements for ''currency'' and ''validity'' as it relates to exercising the privileges of an airman certificate, rating or authorization. As a result of adding this new § 61.2, we have removed the word ''current'' from §§ 61.1, 61.3, 61.19, 61.23, 61.25, 61.39, 61.51, 61.53, 61.55, 61.63, 61.65, 61.73, 61.75, 61.77, 61.89, 61.93, 61.101, 61.157, 61.185, 61.195, 61.197, 61.199, 61.213, 61.303, 61.403, 61.407, 61.429, and 61.431. Furthermore, by adding this new § 61.2, we have also removed the word ''valid'' from §§ 61.1, 61.3, 61.23, 61.53, 61.75, 61.77, 61.101, 61.303, 61.403, 61.429, and 61.431.

The words ''current'' and ''valid'' had not been defined until we proposed the definitions in the NPRM (*i.e.,* Notice No. 06–20; 72 FR 5806–5854; February 7, 2007). In the past, the words ''current'' and ''valid'' had been used in some sections of part 61, but not consistently or universally. Section 61.2 establishes the requirements for ''currency'' and ''validity'' as it relates to a person's certificate, rating, endorsement, or authorization in order to exercise the privileges of that certificate, rating, endorsement or authorization.

Five commenters expressed support for the various additions or replacements making clear that certificates, ratings, and other privileges must be current and valid for use. One commenter pointed out that the changes clarify that mere possession of a certificate is not necessarily sufficient to meet requirements.

Six commenters asserted that the proposed additions or revisions are unnecessary. Three commenters asserted that the requirement for certificates and ratings to be current and valid is implied, and it is not necessary to revise the regulations to reflect them. One commenter asserted that the regulatory requirements for exercising privileges are effective regardless of whether a regulation specifically requires that a privilege be current. Three commenters believed that the proposed changes to § 61.1 make adequately clear that pilots' certificates must be both valid and current, and that it is unnecessary to add the qualifier ''current and valid'' throughout part 61. Three commenters recommended that, instead of making changes throughout part 61, the FAA define valid and current in § 1.1 of the regulations. One commenter suggested a blanket statement to the effect that certificate holders are required to meet all standards required to exercise any particular privilege at the time of intended use. One commenter pointed out that many certificate types have no expiration, making currency a moot issue.

Six commenters pointed out that there is nothing on the face of pilot certificates that indicates currency or validity, and that reference to a logbook or training records is required. Three commenters asserted that compliance with the proposed rules would require a pilot to carry logbooks or flight training records to prove currency, and object to the proposal for that reason. These commenters asserted that requiring pilots to carry logbooks would expose them to loss or damage, and that pilots using computer-based flight records would be unable to comply. Two commenters urged that the proposed rules not be interpreted to require pilots to carry logbooks. One commenter recommended that the regulations require a pilot to make proof of currency available within a reasonable time upon inquiry.

Five commenters opposed the proposed additions and revisions because they believe that they will confuse matters rather than clarify them. Two commenters asserted that confusion will result from the fact that different currency requirements apply to different operations. One commenter asserted that there is no distinction between a current certificate and a valid one.

The changes made here do not establish additional requirements on pilots, flight instructors, and ground instructors, but merely clarify the meaning of the rules. The FAA acknowledges the comments received on this proposal, and therefore we decided to clarify the requirements for

''currency'' and ''validity'' by establishing this new § 61.2.

4. This revision of § 61.3(j)(3) deletes an obsolete date

We had proposed to delete the existing § 61.3(j)(3) that references obsolete dates. Section 61.3(j)(3) states ''Until December 20, 1999, a person may serve as a pilot in operations covered by this paragraph after that person has reached his or her 60th birthday if, on March 20, 1997, that person was employed as a pilot in operations covered by this paragraph.'' However, § 61.3(j)(3) is being revised in the ''Part 121 Pilot Age Limit'' direct final rule, and so we have withdrawn the proposal to delete it in this rulemaking project. We also had proposed deleting the statement in ''Except as provided in paragraph (j)(3) of this section'' under § 61.3(j)(1). Again, we have withdrawn this proposal, because the ''Part 121 Pilot Age Limit'' direct final rule will conform the age at which pilots may serve in part 121 air carrier operation to the Fair Treatment for Experienced Pilots Act, Public Law 110–135.

Two commenters supported elimination of the exception to age limitations because the date has passed. Two commenters opposed application of age limitations on operating privileges. One commenter recommended relaxing the age limitations with respect to certain operations, noting that available data does not provide a logical basis. One other commenter argued that, irrespective of age, an individual should be permitted to exercise all privileges if he/she can pass the applicable medical examination.

The FAA acknowledges the comments received on this proposal. The FAA will amend § 61.3(j)(3) in the ''Part 121 Pilot Age Limit'' direct final rule.

5. This revision of § 61.19(b) amends the duration of the student pilot certificate

In the NPRM, we had proposed to revise § 61.19(b) to extend the duration period for the student pilot certificate to thirty-six calendar months for individuals under the age of 40 years. Since we proposed this revision, the FAA has issued the ''Modification of Certain Medical Standards and Procedures and Duration of Certain Medical Certificates'' final rule (73 FR 43064; July 24, 2008) incorporating a new § 61.23(d) that extended the duration of the third class medical certificate to the ''60th month after the month of the date of examination shown on the medical certificate'' for persons under the age of 40 years. Therefore, we are making a conforming change that further revises § 61.19(b) to parallel with the provisions set forth in the ''Modification of Certain Medical Standards and Procedures and Duration of Certain Medical Certificates'' final rule.

Twelve commenters supported the proposed revision. Five commenters supported the proposed correspondence to the duration of third class medical certificate, but recommended that the provision also take into account a proposed change in the duration of those certificates. One commenter supported the proposed provision, but recommended it be applicable to all student pilots, regardless of age. Three commenters expressed support for increasing duration of student pilot certificates for persons seeking a glider or balloon rating and one person recommended that the duration also be increased for those seeking an airship rating, because of the limited training assets available.

The FAA acknowledges the supportive comments received on this proposal, and has made the changes and conforming changes to § 61.19(b).

6. This revision of § 61.19(b)(3) extends the duration period to 36 calendar months for the student pilot certificate for persons seeking a balloon or glider rating

In the NPRM, we proposed to revise § 61.19(b)(3) to extend the duration period for the student pilot certificate for persons seeking a balloon or glider rating to thirty-six calendar months. Since we proposed this revision, the FAA has issued the ''Modification of Certain Medical Standards and Procedures and Duration of Certain Medical Certificates'' final rule (73 FR 43064; July 24, 2008) that incorporates a new § 61.23(d) that extended the duration of the third class medical certificate to the ''60th month after the month of the date of examination shown on the medical certificate'' for persons under the age of 40 years. Therefore, we are making a conforming change that further revises § 61.19(b)(3) to parallel the provisions set forth in the ''Modification of Certain Medical Standards and Procedures and Duration of Certain Medical Certificates'' final rule. In effect, this revision extends the duration period for the student pilot certificate for persons seeking a balloon or glider rating to 60 calendar months after the month of the date the student pilot certificate was issued, regardless of the age of the person. Under the rule, persons seeking a balloon or glider rating are not required to hold a medical certificate (*See* § 61.23(b)(1)).

Three commenters supported the proposed increase in duration of student pilot certificates for persons seeking a glider or balloon rating. One commenter recommended the duration also be increased for persons seeking an airship rating due to the limited training assets available. The FAA has determined that the recommendation to expand this revision to include persons seeking an airship rating is beyond the scope of this final rule.

The FAA acknowledges the comments received on this proposal, and has made the change and conforming changes to § 61.19(b)(3).

7. This proposal would have amended §§ 61.19(d), 61.197(a), and 61.199 to allow for the issuance of a flight instructor certificate without an expiration date and clarifies the flight instructor certificate reinstatement requirements

The FAA proposed in the NPRM to revise §§ 61.19(d), 61.197(a), and 61.199 allowing issuance of flight instructor certificates without an expiration date. After further consideration and additional analysis and review of comments, we have determined revising our application procedures can achieve equivalent results. We plan to adopt a simplified application process where a flight instructor refresher course (FIRC) provider can submit applications directly to the FAA's Airman Certification Branch in Oklahoma City, Oklahoma. When the flight instructor renewal applicant signs and completes an application, the FIRC provider mails the application directly to the FAA's Airman Certification Branch. At this point, the FAA will prepare and issue the renewed flight instructor certificate with a new expiration date.

We also decided to continue issuing flight instructor certificates with expiration dates, but through a simplified application process. This simplified application process allows for the flight instructor renewal applicant to complete and sign new ''Flight Instructor Renewal Application,'' FAA Form 8710–1 CFI. If the flight instructor renewal application is a result of completing FIRC training course of training, most FIRC providers have Airman Certification Representatives assigned to process their flight instructor renewal applications. The FAA's Airman Certification Branch, AFS–760, has a process in place where most FIRC providers are now permitted to submit their flight instructor renewal applications directly to the FAA's Airman Certification Branch.

Under this process, a FIRC provider's entire responsibility is to positively identify applicant, sign application, and send to the FAA Airman Certification Branch. The FAA's Airman Certification Branch will then process and issue the renewed flight instructor certificate. Although the Aircraft Owner and Pilots Association (AOPA) Safety Foundation petitioned the FAA to issue flight instructor certificates without an expiration date, we believe our simplified application process provides equivalent results. Furthermore, since the AOPA Safety Foundation petitioned for this change in 1999, the FAA believes its changes in the application and certification process have negated the need for the petitioned change.

8. This revision of § 61.19(e) standardizes the recent experience requirements for the ground instructor certificate

This final rule amends § 61.19(e) linking currency requirements for the ground instructor certificate with duration period requirements. Our intent is to further clarify currency requirements for ground instructors. Since issuance of § 61.19(e), there have been some questions about how a ground instructor remains current. By revising § 61.19(e) and linking this provision with the recent experience requirements under revised § 61.217 we provide clarity. Four commenters supported the proposed provisions bringing ground instructor certificate durations in line with currency requirements.

The Greater St. Louis Flight Instructor Association recommended ground instructors be required to complete a Flight Instructor Refresher Clinic to renew their privileges every 2 years. Such a renewal requirement would refresh instructors on core concepts and allow introduction of new material.

The FAA is adopting the revision as proposed in the NPRM.

9. This revision of § 61.23(a)(3)(vii) provides for Examiners to only be required to hold a third class medical certificate

Amended § 61.23(a)(3)(vii) requires Examiners to hold only a third class medical certificate. The FAA wants to parallel Examiners' medical certificate requirements in FAA Order 8900.2. FAA Order 8900.2 requires that an Examiner hold only a third class medical certificate when performing practical tests in an aircraft (with an exception for Examiners administering practical tests in a glider or balloon).

Four commenters supported the provision permitting examiners to hold only a third class medical certificate. The Greater St. Louis Flight Instructor Association asserted that examiners should not be required to hold a medical certificate at all, because, according to § 61.47, an Examiner is not the pilot in command (PIC). The association further asserted that Examiners reviewing sport pilot certificate applicants should not be required to hold a medical certificate.

The FAA acknowledges the comments received about our proposals. We are adopting the provision permitting Examiners only be required to hold third class medical certificates in § 61.23(a)(3)(vii).

10. This revision of § 61.23(b)(3) clarifies that persons exercising the privileges of a glider or balloon rating are not required to hold a medical certificate

This final rule amends § 61.23(b)(3) by clarifying that persons exercising the privileges of a glider or balloon rating are not required to hold a medical certificate. The FAA has received questions about § 61.23(b)(3). Some have asked whether the no medical certificate requirement for operating a balloon or a glider applies only when a person is taking a practical test for a glider or balloon rating or whether it applies when a person is exercising the privileges of a glider or balloon rating. The rule is intended to apply in both situations. Section 61.23(b)(3) now clarifies that persons exercising the privileges of their glider or balloon rating, as appropriate, are not required to hold a medical certificate. As specified in the revised § 61.23(b)(8), a person also is not required to hold a medical certificate when taking a practical test for a balloon or glider rating.

Two commenters supported the proposed clarification that no medical certificate is required to exercise private pilot privileges in a balloon or glider. The FAA is adopting this change because it further clarifies § 61.23(b)(3) that when pilots are exercising the privileges of their glider or balloon rating, they do not have to hold a medical certificate.

11. This revision of § 61.23(b)(7) adds situations where an Examiner need not hold a medical certificate

This final rule amends § 61.23(b)(7) to establish that when an Examiner or a Check Airman is administering a test or check for an airman certificate, rating, or authorization in a glider, balloon, flight simulator, or flight training device, he/she will not be required to hold a medical certificate. Existing § 61.23(b)(7) states that an Examiner or Check Airman is not required to hold a medical certificate when administering a test or check for a certificate, rating, or authorization in a flight simulator or flight training device. The words ''glider'' and ''balloon'' were inadvertently left out when the rule was last revised.

Two commenters supported the proposed clarification that no medical certificate is required to administer a practical test in a glider, balloon, flight simulator, or flight training device. The FAA is adopting the revision as proposed in the NPRM.

12. This revision of § 61.23(b)(8) adds situations where an applicant need not hold a medical certificate

This final rule amends § 61.23(b)(8) establishing when an applicant is receiving a test or check for a certificate, rating, or authorization in a glider, balloon, flight simulator, or flight training device, the applicant is not required to hold a medical certificate.

Existing § 61.23(b)(8) states that an applicant is not required to hold a medical certificate when receiving a test or check for a certificate, rating, or authorization in a flight simulator or flight training device. The words ''glider'' and ''balloon'' were inadvertently left out when the rule was last revised.

Two commenters supported the proposed clarification adding that a medical certificate is not required to undergo a practical test in a glider, balloon, flight simulator, or flight training device.

The FAA is adopting the revision as proposed in the NPRM.

13. This revision of § 61.23(b)(9) relieves military pilots of the U.S. Armed Forces from having to obtain an FAA medical certificate

This final rule adds a new § 61.23(b)(9) that, in some cases, relieves military pilots from the requirement to have an FAA medical certificate. Instead, military pilots must have an up-to-date medical examination conducted by the U.S. Armed Forces, which authorizes them to perform flight duty. This exception is for military pilots from the U.S. Air Force, U.S. Army, U.S. Marine Corps, U.S. Navy, U.S. Coast Guard, and National Guard and Reserve units.

The pilot's authorization for flight duty must be up to date on the date he or she relies on the military medical authorization to qualify for the § 61.23(b)(9) exception. We are using the general phrase ''up to date'' to modify a pertinent military medical authorization because the terminology

regarding flight duty/flight status varies between the Army, Navy, Air Force, Marine Corps, Coast Guard, and National Guard and Reserve. The exception may be only used for flights requiring privileges of an FAA third-class medical certificate and when flying within U.S. airspace. We have limited this exception to operations within U.S. airspace because international standard (Annex 1 to the Convention on International Civil Aviation) requires pilots to hold an appropriate medical certificate from their civil aviation authority.

A conforming change has also been made to new § 61.3(c)(2)(xii) to exclude U.S. military pilots from having to carry an FAA medical certificate when exercising the privileges of their FAA pilot certificates. However, an up-to-date military medical examination is required for that person's active status as a military pilot. If requested by the FAA, the pilot will be required to show active status as a military pilot in lieu of the FAA medical certificate. To clarify, by ''active status'' we mean that the military pilot has an up-to-date medical examination and clearance issued by the U.S. Armed Forces authorizing pilot flight duty. Common military terminology for this authorization is an ''up slip'' or medical clearance to fly.

As implied in the existing § 61.39(a)(4), to be eligible for a practical test for a certificate or rating issued under part 61, one does not always need to hold an FAA-issued medical certificate. Under this § 61.23(b)(9) exception, a military pilot who is applying for a practical test is only required to have completed a U.S. military medical examination for military pilot status in lieu of holding an FAA third-class medical certificate. The FAA has determined that medical examinations provided by the U.S. Armed Forces provide a level of safety that more than satisfies the standards required for an FAA third-class medical certificate.

The FAA recognizes that each branch of the U.S. military has its own set of medical standards required for military pilot applicants. While there may be differences, the FAA finds that the military medical standards met by applicants—many who will conduct complex military exercises or combat operations—are, by nature and of necessity, more stringent and therefore exceed minimum 14 CFR part 67 standards. Military medical examinations also are more stringent. For example, military pilots endure more thorough vision screening—such as for refraction, depth perception, night vision, and intraocular tension. Military pilots are subjected to audiometry testing during the hearing portion of their examinations whereas civilian pilots are allowed to choose their method of hearing test which can be a speech discrimination test, a conversational voice test, or pure-tone audiometry. Laboratory testing (such as glucose, lipid, hemoglobin, serology, urinanalysis testing) and radiographic studies (such as chest x-ray) also are conducted.

The FAA recognizes that there may not be absolute parallels in military and civilian aviation with regard to certain procedural screening, such as for substance abuse. For example, the FAA verifies all medical certificate applications against information contained in the National Driver Registry to determine whether an applicant has failed to reveal an alcohol-related motor vehicle action. While this may not be done in the same manner during military pilot medical screening, military pilots are more subject to routine screening for substance abuse than are civilian pilots. Civilian private pilots must adhere to part 61 substance abuse standards, however they are not subject to routine drug testing. Unlike in the civilian realm where notice must be given, in the military realm routine screening typically is unannounced and is observed by collectors. In addition, within a military squadron, close observation and scrutiny of behavior is provided by colleagues within the squadron and also by squadron flight surgeons who work and fly with military pilots on a daily basis.

While medication usage authorized for military pilots may differ from usage authorized by the FAA for civilian pilots, the basic philosophy is the same—when contraindicated for flying, pilots must be grounded. Military pilots must be approved by a flight surgeon when taking any new medication. While military pilots are bound by standards similar to 14 CFR 61.53, prohibiting operations during a known medical deficiency, military pilots are more likely to be removed from flying duties before they have to make the decision to ground themselves. Because military oversight of pilots is branch specific, whereas FAA oversight is much more broad-based, the military is able to ground pilots more readily when necessary. Military pilots may not return to flight status unless approved by a flight surgeon.

Twelve commenters supported the proposed provision excusing military pilots who have an up-to-date military medical examination from holding an FAA medical certificate. Six commenters recommended that, in addition to military pilots, any military air crewmember holding an up-to-date military medical examination be allowed to meet FAA medical certificate requirements without actually holding an FAA-issued medical certificate. One commenter opined that the proposed provision appears to conflict with § 61.31(c)(1) requiring pilots to carry their medical certificates to operate as pilot in command (PIC). Two commenters recommended that FAA clarify what constitutes evidence of a military medical examination, and one person suggested the FAA define ''current'' for such examinations. He/she further recommended such examinations be current for twelve calendar months from examination date.

The Experimental Aircraft Association (EAA) and the National Association of Flight Instructors (NAFI) noted that §§ 91.146 and 91.147, prescribing requirements for passenger-carrying flights for the benefit of charitable, nonprofit, or community events, require the event sponsor to furnish the local Flight Standard District Office (FSDO) with a photocopy of the pilot's medical certificate. EAA and NAFI recommended amending the proposed rule to clarify that military pilots are eligible to conduct such flights based on their military examination.

In response to commenters who requested any military air crewmember holding a military medical examination (*e.g.*, aviation weapons officer, flight surgeon, navigator, flight crew chief, flight engineer, *etc.*) be excused from FAA medical certificate requirements, we have determined that this medical exception will only be afforded to U.S. military pilots. We determined there are too many differences in the stringency, standards, and durations of military medical examinations for the various other kinds of military crewmembers to permit crewmembers other than pilots to exercise the privileges of an FAA medical certificate without requiring them to hold one. Therefore, this medical exception provided in § 61.23(b)(9) will only be afforded to U.S. military pilots under the circumstances described above.

Procedurally, we envision this process to work as follows. A military pilot's satisfactory completion of a military medical examination from the U.S. Armed Forces, which authorizes the pilot flight duty, is routinely recorded on a military medical clearance or recommendation for flying form (*e.g.*, DA Form 4186, AF Form 1042, NAVMED 5410/2, *etc.*). The pilot will not need to show the actual

military medical examination record form. If the pilot is required to show the FAA that he or she has an up-to-date military medical clearance authorizing pilot flight duty on a given day, the pilot will only need to show the FAA a copy of the official U.S. military pilot flight documentation record, which indicates the pilot's flight status and his or her medical standing.

We do not find that the proposed exception conflicts with § 61.31(c)(1), requiring pilots to carry their medical certificates to operate as PIC. Since military pilots do not carry an actual document of their military medical examination, they are excused from having to carry a medical certificate when exercising the privileges of their FAA pilot certificates. We have provided a discussion and explanation of this matter in the preceding paragraphs.

Responding to the EAA and NAFI comment regarding §§ 91.146 and 91.147 requirements for passenger-carrying flights benefiting charitable, nonprofit, or community events, military pilots are not required to hold an FAA medical certificate under our new § 61.23(b)(9). This means that the military medical examination normally could not be used for flights engaged in the carriage of passengers or property for compensation or hire. However, under § 61.113(b) there are some limited exceptions for private pilots holding a third-class medical certificate, and the military pilots qualifying for our new § 61.23(b)(9) would qualify for the § 61.113(b) exceptions as well.

In response to the commenter requesting we define ''current'' (*i.e.*, proper duration) for the purposes of a U.S. military medical examination, the U.S. military duration standard for examinations for pilot flight status is typically one year, though some may be as short as six calendar months or as long as eighteen calendar months. However, the specific duration requirements for U.S. military medical examinations are governed by the U.S. Armed Forces, not the FAA. Also, the military has procedures in place similar to the civil requirements of § 61.53 prohibiting flight duty when they are unable to meet medical requirements.

14. This revision of § 61.29(d)(3) deletes the requirement for a person to furnish their Social Security Number

This final rule no longer requires that a person requesting replacement of a lost or destroyed airman certificate, medical certificate, or knowledge test report furnish his/her Social Security Number. The FAA by law cannot require a person to furnish his/her Social Security Number. However, a person may voluntarily provide his/her Social Security Number to establish his/her identity. In addition, we have added clarifying language in § 61.29(d)(4) explaining what information is required in the letter from a person who requests replacement of a lost or destroyed medical certificate.

Six commenters supported elimination of having to furnish a Social Security Number for a replacement certificate. One commenter objected to our proposal arguing that a Social Security Number should be furnished at all times. The FAA acknowledges the comments received about this proposal. Federal Law restricting release of Social Security Numbers is controlling over FAA regulations. Therefore, the FAA is adopting the revision as proposed in the NPRM.

15. This revision deletes the duplication in § 61.31(d)(2) by deleting the rule

This final rule deletes § 61.31(d)(2) that required a pilot in command (PIC) to receive ''training for the purpose of obtaining an additional pilot certificate and rating that are appropriate to that aircraft, and be under the supervision of an authorized instructor.'' The FAA has received inquiries about the difference between paragraphs (d)(2) and (d)(3) and found that they are conflicting. We also found that paragraph (d)(2) conflicts with § 61.51(e)(1)(i).

When the FAA initially revised § 61.31(d), we were considering a new phrase ''supervised PIC flight'' that would allow a PIC in training to act as an aircraft's PIC if properly supervised by their flight instructor. (*See* 60 FR 41160, 41227; August 11, 1995). The ''supervised PIC flight'' concept was not adopted in the final rule, but paragraph (d)(2) erroneously remained in the final rule (*See* 62 FR 16220; April 4, 1997). Paragraph (d)(3) of § 61.31 details FAA's PIC requirements and § 61.51(e)(1)(i) for logging PIC flight time.

Three commenters supported changes to § 61.31(d). One commenter noted that under proposed §§ 61.31(d)(2) and 61.51(e)(1), a pilot not rated for a category or class of aircraft could, without time limitation, log PIC flight time in that category or class of aircraft once he/she received a solo flight endorsement. The commenter suggested the FAA put a duration limitation on solo endorsements similar to the 90-day limitation on solo endorsements issued to student pilots.

The FAA acknowledges the comments received about this proposal. The 90-day limitation on solo endorsements is for student pilots, not rated pilots. Therefore, the FAA is deleting § 61.31(d)(2) as proposed in the NPRM.

16. This revision adds a new § 61.31(k) that provides training and qualification requirements for pilots who want to operate with night vision goggles

This final rule creates a new § 61.31(k) that will require ground and flight training and a one-time instructor endorsement for a pilot to act as PIC during night vision goggle (NVG) operations. This final rule ''grandfathers'' PICs previously qualified as PIC for NVG operations under § 61.31(k). Under new subparagraph (k)(3), a pilot will not need the ''one-time'' NVG training and endorsement provided the pilot can document having satisfactorily accomplished any of the following pilot checks for using NVGs in an aircraft:

- Completion of an official pilot proficiency check for using NVGs and that check was conducted by the U.S. Armed Forces; or
- Completion of a pilot proficiency check for using NVGs under part 135 of this chapter and that check was conducted by an Examiner or a Check Airman.

Three commenters generally supported the training requirements for NVG operations. The Aircraft Owners and Pilots Association (AOPA) supported the general concept of defining and addressing NVG operations, while urging deference to NVG users on specific operational details of proposed provisions. The General Aviation Manufacturers Association (GAMA) suggested the FAA consider recommendations from both the 2000 Aviation Rulemaking Advisory Committee (ARAC) with respect to NVG operations and the September 7, 2005 part 135/125 Aviation Rulemaking Committee (ARC).

American Eurocopter and the Helicopter Association International (HAI) objected to the requirement for training on the preparation and use of internal and external lighting systems for NVG operations. They asserted that external lighting systems of helicopters should require no preparation for NVG operations and if external lights are interfering with operations, they can be turned off. The commenters supported the proposed rule to the extent the requirement refers to training in the use of existing external lighting. Eurocopter and HAI also supported qualified law enforcement personnel NVG operations training and endorsement requirements.

Four comments were submitted by representatives of law enforcement agencies or entities involved in training law enforcement personnel in NVG

operations. These commenters noted NVG flight operations are conducted on a wide scale by law enforcement agencies and civilian public service operators. These four commenters proposed that pilots who have completed a formal NVG training course administered by an NVG manufacturer or authorized trainer or instructor and have logged twenty hours as PIC in NVG operations should be excused from the NVG operations training and endorsement requirements. An exemption from NVG operations training and endorsement should also be granted to U.S. Armed Forces pilots with NVG or part 135 experience. One commenter objected to NVG operations by the general flying public and stated use outside of law enforcement should be prohibited. The commenter asserted the risks of such use outweigh any potential benefit. The commenter also recommended use of NVG by law enforcement personnel should be addressed by a stand alone rulemaking.

The FAA appreciates the diverse comments received on our NVG training and qualification requirement proposal. The NVG ground and flight training in § 61.31(k) include recommendations from the 2000 ARAC and part 125 and 135 ARCs. We have further reviewed the ground and flight training in § 61.31(k) to ensure that the ground and flight training requirements conform to industry recommendations. The FAA agrees with the commenters and has further revised § 61.31(k) accordingly. The FAA has added a new paragraph (iii) to § 61.31(k)(3) to incorporate these recommendations.

In response to the recommendation about preparation of external lighting systems, we have revised the rule text to clarify the intent. We agree that a pilot does not have ability to prepare external lighting systems and thus we have revised the language in § 61.31(k)(2)(i). We have replaced the word ''preparation'' with ''preflight'' to clarify the intent for a pilot to preflight the internal and external aircraft lighting systems.

Finally, we do not agree that NVG operations should be restricted to law enforcement personnel. There are legitimate civilian uses for NVG, and our rule for training and qualifications will benefit law enforcement and other users of NVG. This final rule includes provisions to excuse law enforcement pilots who have completed a formal NVG training course administered by an NVG manufacturer or authorized trainer or instructor and have logged 20 hours as PIC in NVG operations from the training and endorsement requirements for NVG operations. This would be in addition to excusing pilots with NVG experience in the U.S. armed forces or in operations under part 135. For the above reasons, the FAA is adopting the ground and flight training requirements for NVG qualifications in § 61.31(k).

17. This revision adds a new § 61.35(a)(2)(iv) that requires proof of current residential address at the time of application for a knowledge test

New § 61.35(a)(2)(iv) clarifies when a person's permanent mailing address is a P.O. Box, the person must show proof of their current residential address at the time of application for a knowledge test. The purpose of this change is to conform the instructions in revised § 61.35(a)(2)(iv) with instructions in existing § 61.60.

Three commenters opposed the proposed provision requiring an applicant for a knowledge test to provide proof of a current residential address, asserting a knowledge test alone does not result in the issuance of a certificate or rating. Two other commenters noted that proof of residence is not required for an airman application, although airmen are required to notify the FAA of changes of address before exercising privileges. One commenter argued since proof of residential address is required for a practical examination, requiring it for a knowledge test is redundant and unnecessary.

The FAA acknowledges the comments received on this proposal. The essence of this change is merely to further clarify the intent of the existing rule and no substantive change is being made to the rule. The FAA is adopting the revision as proposed in the NPRM.

18. This revision of § 61.39(b)(2) deletes the word ''scheduled'' in front of the phrase ''U.S. military air transport operations''

Revised § 61.39(b)(2) deletes the word ''scheduled'' in front of the phrase ''U.S. military air transport operations'' because there is no such thing as ''scheduled'' U.S. military transport operations. One commenter supported the proposed deletion. The FAA is adopting the revision as it was proposed in the NPRM.

19. This revision of § 61.39(c)(2) deletes the phrase ''or a class rating with an associated type rating'' in reference to the endorsement exception for applying for an additional aircraft class rating

Revised § 61.39(c)(2) deletes the phrase ''or a class rating with an associated type rating'' for persons who are applying for an additional aircraft class rating. In §§ 61.39(a)(6) and 61.63(c), the rules require an applicant for a practical test for an additional aircraft class rating to receive a logbook or training record endorsement from an authorized instructor. Existing § 61.39(c)(2) incorrectly suggests that an endorsement is not required for an applicant for an aircraft class rating. This final rule amends § 61.39(c)(2) by removing the phrase ''or a class rating with an associated type rating'' which clarifies that the rule does not exempt applicants for an aircraft type rating from having to receive an endorsement from an authorized instructor.

One commenter supported the deletion of the instructor endorsement exception for an additional class rating. The FAA acknowledges the comment received on this proposal. The purpose of this change is to correct a mistake in the former § 61.39(c)(2). No substantive changes have been made to § 61.39(c)(2), and we are adopting the revision as proposed in the NPRM.

20. This revision of § 61.39(d) and (e) clarifies the time frame for completing a practical test

This revision amends the phrase ''60 calendar days'' in § 61.39(d) and (e) to read ''2 calendar months.'' Our proposed change makes it simpler to calculate the time for when a segmented practical test must be completed. An applicant who accomplishes a segmented practical test will be required to complete the entire practical test within two calendar months after beginning the test. For example, an applicant who starts the oral portion of the practical test on July 2, 2008, will have to complete the remaining portions of the practical test (*i.e.*, simulator/training device check and aircraft flight check) before the end of September 2008. Additionally, we have further revised § 61.39(a)(6)(i) because we failed to propose a change of ''60 days'' to read ''2 calendar months'' in the rule. This was an inadvertent oversight and spotted by a commenter during NPRM review.

Ten commenters supported the proposed change in the time in which a practical test must be completed. One commenter asserted that if the time for completion of a practical test is changed to two calendar months, the validity period of the flight instructor endorsement must likewise be changed. LeTourneau University recommended the currency requirements of § 61.57(a)(1) and (b)(1) also be changed from ninety days to three calendar months. Another commenter generally supported bringing all time requirements in line by using a calendar month basis, but objected that the

proposed rule, as written, could give pilots up to 3 months to complete a practical test. The commenter's assessment is correct, and the new rule change will allow a pilot to have up to three months to complete a practical test.

The FAA also agrees with the recommendation to revise the validity period for flight instructor endorsement from ''60 days'' to read ''2 calendar months'' because of our inadvertent oversight in not proposing this change in § 61.39(a)(6)(i). Therefore, further revised § 61.39(a)(6)(i) now reads: ''Has received and logged training time within 2 calendar months preceding the month of application in preparation for the practical test.''

21. This revision of § 61.43(b) will clarify when an applicant has the choice to perform the practical test as a single pilot or use a second in command

This final rule has revised § 61.43(b) to clarify when an applicant can perform the practical test as a single pilot or use a second in command. If a second in command pilot is used under new § 61.43(b)(3), the limitation ''Second in Command Required'' will be placed on the applicant's pilot certificate. This final rule revises § 61.43(a) by moving old § 61.43(a)(5) into revised § 61.43(b).

Under new § 61.43(b)(1), if the aircraft's FAA-approved aircraft flight manual requires the pilot flight crew complement be a single pilot, then the applicant will be required to demonstrate single pilot proficiency on the practical test. Under new § 61.43(b)(2), if the aircraft's type certification data sheet requires the pilot flight crew complement be a single pilot, then the applicant is required to demonstrate single pilot proficiency on the practical test. The Cessna 172, Cessna 310, Piper Malibu (PA–44), and Beech Baron (BE–58) are examples of aircraft whose flight manuals and/or type certification data sheets require the pilot flight crew complement be a single pilot.

Under new § 61.43(b)(3), if the FAA Flight Standardization Board report, FAA-approved aircraft flight manual, or aircraft type certification data sheet allows the pilot flight crew complement to be either a single pilot, or a pilot and a copilot, then the applicant may perform the practical test as a single pilot or with a copilot. If the applicant performs the practical test with a copilot, the limitation of ''Second in Command Required'' will be placed on the applicant's pilot certificate. Under new § 61.43(b)(3), the ''Second in Command Required'' limitation may be removed if and when the applicant passes the practical test by demonstrating single-pilot proficiency in the aircraft in which single-pilot privileges are sought.

Examples of aircraft for which an FAA Flight Standardization Board has approved the minimum pilot flight crew complement to be either a single pilot, or a pilot with a copilot, are certain models of the Beech 300, Beech 1900C, and Beech 1900D airplanes that received certification under SFAR 41; certain models of the Empresa Brasileira de Aeronautica EMB 110 airplanes that received certification under SFAR 41; and certain models of the Fairchild Aircraft Corporation SA227–CC, SA227–DC, and other Fairchild commuter category airplanes on that same type certificate that received certification under SFAR 41 and that have a passenger seating configuration, excluding pilot seats, of nine seats or less and the airplane's type certificate authorizes single pilot operations.

The Cessna 501, Cessna 525, Cessna 551, Raytheon 390, and Beech 2000 are examples of aircraft whose flight manuals and/or type certification data sheets allow the minimum pilot flight crew complement to be either a single pilot, or a pilot with a copilot.

Two commenters supported the proposed clarifications of circumstances under which a pilot may complete a practical test with a copilot present. The FAA is adopting the revision as proposed in the NPRM.

22. This revision of § 61.45(a)(2)(iii) will define what is a military aircraft for the purpose of a practical test

Revised § 61.45(a)(2)(iii) will clarify the definition of a ''military aircraft'' when used in a practical test. Recently, there has been some confusion about whether it is permissible to use a surplus military aircraft with no civilian aircraft type designation for an airman certificate or rating practical test. Some applicants have requested to use a surplus military OH–58 Army helicopter for their practical test. As these surplus military helicopters are not Bell BH–206 helicopters, they do not have a civilian type designation. The FAA has determined it is not permissible to use these surplus former military aircraft for completing a practical test.

Revised § 61.45(a)(2)(iii) will now define a ''military aircraft'' as an aircraft under the direct operational control of the U.S. Armed Forces. Under this definition, surplus military aircraft are not military aircraft because they are not under the direct operational control of the U.S. military.

Three commenters, including HAI, objected to the proposed definition and exclusion from civilians using surplus military aircraft on a practical test. Two commenters asserted that any aircraft that satisfies equipment requirements and is deemed safe for operation should be eligible for a practical test. They further argued that the checking of pilots who use these aircraft exclusively would enhance safety. One commenter asserted that the operation of historical aircraft should be encouraged. All commenters opposing the proposed provision recommended the FAA issue special airworthiness certificates for such aircraft. The EAA and NAFI objected to the use of the term surplus military aircraft, and recommended the FAA use the industry-accepted term, ''former military aircraft.''

The purpose of our rule change is to clarify the existing rule, and no substantive changes are being made. Regarding EAA and NAFI's recommendation that the FAA use industry-accepted term ''former military aircraft,'' the rule language in § 61.45(a)(2)(iii) does not use either term of ''surplus military aircraft'' or ''former military aircraft.'' The rule merely defines when military aircraft experience is applicable for a certificate or rating.

23. This revision of § 61.45(c) will except lighter-than-aircraft, and gliders without an engine, from the requirement that aircraft used for a practical test must have engine power controls and flight controls that are easily reached and operable in a conventional manner by both pilots

This final rule amends § 61.45(c) by excepting lighter-than-aircraft, and gliders without an engine, from requirement that aircraft used for a practical test must have engine power controls and flight controls easily reached and operable in a conventional manner by both pilots. Except for engine-powered gliders, most gliders do not have engine power controls.

Three commenters supported the proposed provision excepting gliders from the requirement that aircraft used for a practical exam have engine power controls and flight controls easily reached and operable by both pilots. One commenter opposed the proposed provision, asserting that motor gliders or self-launch gliders have power controls. The commenter argued that, even without the proposed provision, the Examiner has discretion to still permit gliders not meeting specifications be used for the practical test. One commenter supported the proposed provision. The commenter

acknowledged that some gliders may have engine controls not easily reached by both pilots, but that this should not preclude an Examiner's determination that a practical test can be safely conducted.

The FAA agrees with the comments that § 61.45(c) requires further clarification to differentiate between gliders that are unpowered and those that have an engine. Section 61.45(c) is further revised by adding phrase ''without an engine'' in reference to gliders.

24. This revision of § 61.51(b)(3)(iv) will provide for logging night vision goggle time

Revised § 61.51(b)(3)(iv) adds a provision that in order to log ''night vision goggle time'' compliance with the training time and aeronautical experience must be demonstrated when acting as pilot in command (PIC) for night vision goggle (NVG) operations. The logging of NVG time will be permitted when performed in an aircraft in flight, in a flight simulator, or in a flight training device.

The Aircraft Owners and Pilots Association (AOPA) supported the concepts of defining and addressing night vision goggle operations, while deferring to NVG users on the specific details of the proposed provisions. American Eurocopter and HAI argued pilots conducting NVG operations should be permitted to log both NVG time and night flight time. These commenters stated a pilot's peripheral vision is not affected and the same cockpit management skills are required for both NVG time and flight time. Two commenters asserted existing § 61.51(b) is adequate to address logging of NVG time and adding ''while using night vision goggles'' would suffice for clarity.

Regarding comment about whether NVG flight time may also be logged as night flight time, the revision to § 61.51(b)(3)(iv) does not prohibit the logging of NVG flight time and night flight time simultaneously. It is acceptable for a person to log both NVG flight time and night flight time if the conditions of flight occur during nighttime. The logging of nighttime for recency of experience must be ''during the period beginning 1 hour after sunset and ending 1 hour before sunrise.'' (*See* § 61.57(b)(1)).

The FAA acknowledges the comments received about this proposal. We are not revising or withdrawing the proposal.

25. This revision of § 61.51(e)(1) will correct an omission of the words ''airline transport pilot'' regarding logging of pilot in command flight time

Because existing § 61.51(e)(1) does not include ''airline transport pilots'' it may appear airline transport pilot (ATP) certificate holders do not have the same pilot in command (PIC) logging privileges as sport pilots, recreational pilots, private pilots, and commercial pilots. This final rule adds ''airline transport pilot'' to § 61.51(e)(1) to avoid any further confusion. In addition, we have adopted a commenter's recommendation the FAA also add ''sport pilot'' to § 61.51(e)(1).

Five commenters supported the proposed provision permitting ATPs to log PIC flight time. Three commenters opposed the proposed rule's omission of sport pilots from the list of pilots permitted to log PIC flight time and recommended their inclusion. We agree with the recommendation that holders of a sport pilot certificate should be able to log PIC flight time. Therefore, we have revised § 61.51(e)(1) to include holders of sport pilot certificates as those who are allowed to log PIC flight time.

26. This revision of § 61.51(e)(1)(iv) will permit a pilot performing the duties of pilot in command while under the supervision of a qualified pilot in command to log pilot in command flight time

Revised § 61.51(e)(1)(iv) will allow a pilot performing the duties of a pilot in command (PIC) while under the supervision of a qualified PIC to log PIC flight time. The FAA is making this revision to provide another way for commercial pilot certificate or airline transport pilot certificate holders to log PIC flight time.

The pilot performing the duties of a PIC will be required to hold a commercial pilot certificate or airline transport pilot certificate with the aircraft rating appropriate to the category and class of aircraft being flown, if a class rating is appropriate. The pilot must be under the supervision of an appropriately qualified PIC. Additionally, the pilot who is performing PIC duties is required to undergo an approved PIC training program consisting of ground and flight training on the following areas of operation: pre-flight preparation, preflight procedures, takeoff and departure phase, in-flight maneuvers, instrument procedures, landings and approaches to landings, normal and abnormal procedures, emergency procedures, and post-flight procedures.

The supervising PIC will be required to hold either a commercial pilot certificate or ATP certificate, and flight instructor certificate. In addition, the supervising PIC must hold the appropriate aircraft rating (*i.e.,* category, class, and type of aircraft being flown, if a class or type rating is required). The supervising PIC must log the PIC training given in the pilot's logbook, certify having given the PIC training in the pilot's logbook, and attest to that certification with his/her signature, flight instructor certificate number, and expiration date, or ATP certificate number, as appropriate. This revision parallels and further clarifies the provisions in revised § 61.129 and existing §§ 61.31(d), 61.159(a)(4), 61.161(a)(3), and 61.163(a)(3) for PIC aeronautical experience.

AOPA supported the concept, but believed the proposed rule was unclear and would lead to confusion. AOPA recommended rewriting the proposed regulatory text to include a matrix text showing conditions under which a pilot may log time as PIC. Four commenters supported the proposed provisions clarifying logging of PIC flight time by pilots acting as PIC under supervision. One commenter questioned whether the proposed provisions are targeted toward pilots working toward advanced certificates, ratings, or authorizations after receiving their commercial pilot certificates.

Four commenters asserted the proposed provisions are unnecessary, as pilots acting as PIC under supervision are already permitted to log PIC flight time under other sections of the regulations. The Greater St. Louis Flight Instructor Association objected to the proposed provisions arguing there is a trend toward pilots having inadequate true solo experience; it believes the proposed rule would result in pilots building time without accruing real experience. One commenter opposed application of the proposed provision other than in operations or aircraft requiring a second in command (SIC) (*e.g.,* operation of light single engine airplanes under part 91). The commenter did not consider a required safety pilot to be an SIC. One commenter objected to requiring endorsement of the acting PIC's logbook by the supervising PIC. The commenter asserted that the training contemplated by the proposed rule is recorded in training records, not logbooks. One commenter recommended pilots logging PIC flight time under supervision also be required to log dual instruction time.

This rule is designed to allow operators to train new hires to eventually become PICs. The rule was

initially petitioned for by Saudi Aramco. Saudi Aramco wanted permission to allow new hires' training in their Bell 214 helicopter to eventually become PICs in the company and allow logging PIC flight time while under the supervision of more experienced and senior PICs. This rule does require pilots to hold at least a commercial pilot certificate and requires those performing supervising PIC duties must hold either a commercial pilot certificate or airline transport pilot certificate, and flight instructor certificate with the appropriate category and class of aircraft being flown, if a class rating is appropriate.

A pilot may log PIC flight time when performing the duties of the PIC while under the supervision of the § 1.1 PIC. The FAA believes the rule is abundantly clear that a person may log PIC flight time when performing the duties of the PIC while under the supervision of the PIC, provided both the person who is performing the duties of the PIC and the supervising PIC meet the requirements of the rule.

After consideration of all the comments received, the FAA is adopting the revision as proposed in the NPRM.

27. This revision of § 61.51(g)(4) conforms the rule for logging of instrument time in a flight simulator, flight training device, and aviation training device to existing policy

This final rule amends § 61.51(g)(4) to allow logging of instrument time in a flight simulator (FS), flight training device (FTD), or aviation training device (ATD) conforming to existing regulation or policy. An authorized instructor (*See* § 61.1(b)(2)) must be present in the FS, FTD, or ATD when instrument training time is logged for training and aeronautical experience for meeting the requirements for a certificate, rating, or flight review (*See* § 61.51(a)). The instructor must sign the person's logbook verifying training time and session content.

Examples of situations in which an authorized instructor will be considered present would be where an authorized instructor is seated at a center control panel in a flight simulation lab and is monitoring each student's performance from control panel display. Another example would be a situation where an instructor assigns a student several instrument tasks and then leaves the room. In such cases, if the flight training device has a monitoring and tracking system that allows the authorized instructor to review the entire training session, the instructor need not be physically present. Another example would be a situation where one authorized instructor monitors several students simultaneously in the same room at a flight simulation lab.

Six commenters supported the proposed provisions clarifying requirements for use of flight simulators, flight training devices and aviation training devices. Three commenters supported the proposed provisions regarding logging of training performed using an aviation training device. ALPA recommended a limitation be placed on the number of students an instructor may supervise, suggesting an instructor be permitted to oversee no more than three students simultaneously. For economic reasons, one commenter supported the specific provision that an instructor may oversee training of more than one pilot simultaneously.

Flight Safety International observed that flight schools and training centers often track training in records other than a logbook, and recommended proposed § 61.51(g)(4) be revised to require signing of a logbook or training record.

The FAA agrees that training permitted to also be logged in a training record. Section 61.51(g)(4) has been rewritten.

On whether to limit the number of students a single instructor may supervise, we did not propose such a restriction in the NPRM. Therefore, to require such a restriction would be beyond the scope of this final rule. The FAA is adopting the final rule as described above.

28. This revision of § 61.51(j) will establish the aircraft requirements for when a pilot may log ''flight time''

Revised § 61.51(j) establishes the aircraft and aircraft airworthiness requirements for when a pilot may log flight time. To log flight time and meet the part 61 aeronautical experience requirements for a certificate, rating, or recent flight experience, the aircraft must have been issued either a standard or special airworthiness certificate (except for U.S. military aircraft flown by U.S. military pilots and under the direct operational control of the U.S. Armed Forces or public aircraft flown by pilots of a Federal, State, county, or municipal law enforcement agency). Special airworthiness certificates include primary, restricted, limited, light-sport, and provisional airworthiness certificates, as well as special flight permits and experimental airworthiness certificates (*See* § 21.175(b)).

Section 61.51(j) has been further revised to correct an error in an earlier version of the rule that prevented the logging of flight time in aircraft issued special airworthiness certificates in the light-sport category, provisional airworthiness certificates, and special flight permits.

This revision will codify existing FAA policy under FAA Order 8900.1, Volume 5, Chapter 2, Section 5, page 3, paragraph 5–315 B., which states:

> B. *Logging Time.* Unless the vehicle is type-certificated as an aircraft in a category listed in § 61.5(b)(1) or as an experimental aircraft, or otherwise holds an airworthiness certificate, flight time acquired in such a vehicle may not be used to meet requirements of part 61 for a certificate or rating or to meet recency of experience requirements.

The FAA has received several inquiries whether it is permissible to use surplus military aircraft that do not hold a civilian type designation as an aircraft or an airworthiness certificate for logging flight time to meet the part 61 requirements for a certificate, rating, or recent flight experience. The FAA's response has been that the aircraft must be of the category, class (if class is applicable), and type (if type is applicable) listed under § 61.5(b)(1) through (7), or the aircraft must hold an experimental airworthiness certificate.

American Eurocopter and HAI objected to the requirement that an aircraft be issued an airworthiness certificate for a pilot to log time in it, noting some aircraft have not been issued airworthiness certificates and may be legally operated without adversely affecting safety. The commenters asserted pilots exclusively operating aircraft without airworthiness certificates will be discouraged from training, which will negatively impact safety. The commenters recommended the FAA create a designation for surplus military aircraft meeting the intent of the rule to permit training and examination in such aircraft. One commenter interpreted proposed § 61.51(j) as prohibiting law enforcement pilots from logging time in surplus military aircraft, noting ability of military pilots to log time in identical aircraft and the ability of sport pilots to log time in uncertified aircraft.

One commenter implied that proposed § 61.51(j) would not permit a sport pilot to log time in aircraft other than light sport aircraft. The commenter questioned whether such a pilot should be able to log training received in such aircraft, and suggested that the proposed § 61.51(j)(2) be deleted, because § 61.51(e)(1) already prevents sport pilots from logging PIC time in other than light sport aircraft. One commenter questioned whether special operating light sport aircraft (SLSA) should be

included in the acceptable airworthiness certificate criteria in proposed § 61.51(j)(1). The commenter also recommended the section require that an acceptable airworthiness certificate be current and valid.

One commenter asserted proposed § 61.51(j) may conflict with § 61.52, permitting logging of time in ultralight aircraft toward a sport pilot certificate. The commenter also asserted that a prohibition on logging time in surplus military aircraft will discourage maintenance of national historic assets.

The purpose of the change is to parallel the rule with existing policy in FAA Order 8900.1, Volume 5, Chapter 2, Section 5, page 3, paragraph 5–315 B and the statutory requirements in Public Law 106–424.

The FAA disagrees the rule prohibits law enforcement pilots from being permitted to log flight time. Section 61.51(j)(4) allows logging of flight time if the pilot is engaged in official law enforcement duties in a public aircraft under the direct operational control of a Federal, State, county, or municipal law enforcement agency. Public Law 106–424 (November 1, 2000) provides, in pertinent part, that pilots of a Federal, State, county, or municipal law enforcement agency may log flight time for the purposes of meeting the aeronautical experience requirements for a certificate, rating or recent flight experience under part 61 in limited cases. The stipulation is that the law enforcement pilot must be operating a public aircraft, as defined under 49 U.S.C. 40102; the aircraft must be identified as a category and class of aircraft listed under § 61.5(b); and the aircraft is being used in law enforcement activities of a Federal, State, county, or municipal law enforcement agency.

The FAA does not find that rule language in § 61.51(j) conflicts with § 61.52. The FAA has always made a distinction between the term ''aircraft'' and ''ultralight vehicle.'' Section 61.51(j) applies to an aircraft that is identified as an aircraft under § 61.5(b). Section 61.52 applies to the use of aeronautical experience obtained in ''ultralight vehicles.''

As previously stated, the FAA has further revised § 61.51(j)(1) to permit a sport pilot to log flight time in light-sport aircraft that hold either a standard or special airworthiness certificate. Under § 61.51(j)(1), the rule permits pilots (including a holder of a sport pilot certificate) to log flight time in an aircraft of U.S. registry with either a standard or special airworthiness certificate. Under § 61.51(j)(1), we have further revised the rule to permit the logging of flight time in an aircraft of U.S. registry with either a standard or special airworthiness certificate. Under § 21.175(b), a special airworthiness certificate includes aircraft that have been issued a primary, restricted, limited, light-sport, or a provisional airworthiness certificate, special flight permit, or experimental airworthiness certificate. Therefore, a special operating light sport aircraft (SLSA) is covered by § 61.51(j)(1) for the purpose of being allowed to log flight time.

29. This revision of § 61.51(k) will establish the criteria and standards for logging NVG time

Revised § 61.51(k) establishes criteria and standards for logging night vision goggle (NVG) time by revising the minimum information entered when logging time in a pilot's logbook. Under new § 61.51(k)(3), the required information for logging NVG time are the logbook entries under § 61.51(b).

Under the revision, a pilot may log NVG time using NVGs as the sole visual reference of the surface in an operation conducted in an aircraft at night (during the period beginning one hour after sunset and ending one hour before sunrise) in flight. Alternatively, a pilot may log NVG time in a flight simulator or in a flight training device provided the flight simulator or flight training device's lighting system has been adjusted to replicate the period beginning one hour after sunset and ending one hour before sunrise.

Under new § 61.51(k)(2), the rule will establish when an authorized instructor may log NVG time. The instructor must be conducting NVG training and must be using NVG as the sole visual reference of the surface. The time must be in an aircraft operated at night in flight, or in a flight simulator or flight training device with the lighting system adjusted to represent the period beginning one hour after sunset and ending one hour before sunrise.

As elsewhere in this final rule document, AOPA supported the general concept of defining and addressing NVG operations, while deferring to NVG users on specific details of the proposed provisions. Two commenters asserted existing § 61.51(b) and § 61.57(a)(3) are adequate and only require adding phrase ''while using night vision goggles.'' Two commenters asserted pilots conducting NVG operations should be permitted to log both NVG time and night flight time. These commenters believed a pilot's peripheral vision is no different under the two conditions and the same cockpit management skills are required for both NVG time and night flight time.

Two commenters recommended clarifying that NVG should not be used as the sole visual reference to the surface, stating NVG should only be used to enhance abilities during night VFR flight.

In regards to the comment about whether NVG flight time may also be logged as night flight time, the revision to § 61.51(b)(3)(iv) does not prohibit the logging of NVG flight time and night flight time simultaneously. It is perfectly acceptable for a person to log both NVG flight time and night flight time if the conditions of flight occur during nighttime. The logging of night flight time for currency purposes is the flight must occur ''during the period beginning one hour after sunset and ending one hour before sunrise'' (*See* § 61.57(b)(1)). Night flight time, for other than the night currency purposes of § 61.57(b)(1), may be logged when the flight occurs during the nighttime conditions as defined in § 1.1 of this chapter (*i.e.,* ''Night'' means the time between the end of evening civil twilight and the beginning of morning civil twilight, as published in the American Air Almanac, converted to local time).

The essence of our changes is clarifying the rule's intent and no substantive changes are being made. Therefore, the FAA is adopting the revision to § 61.51(b)(3)(iv).

30. This revision of § 61.57(c) amends the instrument recent flight experience tasks and iterations and allows use of aviation training devices, flight simulators, and flight training devices for maintaining instrument recent flight experience

The FAA has decided to withdraw the referenced proposal to amend the instrument tasks for maintaining instrument currency because the proposed tasks were opposed by an overwhelming majority of the commenters. As a result of our decision to withdraw this proposal, the instrument tasks for maintaining instrument currency under § 61.57(c) will remain as:

- Six instrument approaches.
- Holding procedures and tasks.
- Intercepting and tracking courses through the use of navigational electronic systems.

This final rule amends § 61.57(c) to allow use of aviation training devices (ATD), flight simulators (FS), and flight training devices (FTD) for maintaining instrument recent flight experience. Revising § 61.57(c) will further clarify that a person who acts as pilot in command (PIC) under instrument flight rules (IFR) or weather conditions at less

than the minimums prescribed for visual flight rules (VFR) must look back 6 calendar months from the month of the flight to determine whether the instrument flight experience requirements were met.

In order to maintain instrument flight experience in airplanes, powered-lifts, helicopters, and airships, the revision requires the pilot perform and log the instrument flight experience in an airplane, powered-lift, helicopter, or airship appropriate to the category of aircraft for the instrument rating privileges the pilot desires to maintain. This instrument flight experience could be completed in either actual instrument meteorological conditions (IMC) or under simulated instrument conditions with use of a view-limiting device.

Subject to certain limitations, a pilot may choose completing his/her instrument experience requirements in an aircraft and/or through use of an FS, FTD, or ATD. The simulation devices must be representative of the category of aircraft suitable for the instrument rating privileges that the pilot desires to maintain.

Under new § 61.57(c)(2), a person may use a flight simulator or flight training device exclusively by performing and logging at least three hours of instrument recent flight experience within the six calendar months before the month of the flight.

Under new § 61.57(c)(3), a person may use an ATD exclusively by performing and logging at least three hours of instrument recent flight experience within the two calendar months before the month of the flight. We have deliberately established differences between the use of an ATD, FS, and flight training devices because use of an aviation training device to maintain instrument recent flight experience is a relatively new concept. The FAA wants to further evaluate its use before we allow use of ATDs equal to that of flight simulators and flight training devices.

Under new § 61.57(c)(4), a person could combine use of the aircraft and FS, FTD, and ATD to obtain instrument experience. When a pilot elects to combine use of an aircraft and simulation device, we will require, under new § 61.57(c)(4), completion of one hour of instrument flight time in the aircraft and three hours in the FS, FTD, or ATD within the preceding 6 calendar months.

Under new § 61.57(c)(5), a person may combine use of an FS or FTD flight training, and an ATD to obtain instrument recent flight experience. When a pilot elects this combination, we will require one hour in a flight simulator or flight training device, and three hours in a training device within the preceding six calendar months.

Under new § 61.57(c)(6), the final rule amends the instrument tasks and iterations for maintaining instrument flight experience in a glider. The person will be required to log instrument recent flight experience, tasks, and iterations in his/her logbook to show accomplishment of this instrument training. The person will be required to use a view-limiting device when performing this instrument recent flight experience or be in actual instrument meteorological conditions.

Three commenters recommended changing the terminology used to describe flight simulation devices. Three commenters asserted the use of basic aviation training devices (BATD) and advanced aviation training devices (AATD) is expected to increase and suggested the rule use this terminology.

Two commenters asserted the differing requirements for maintaining currency using aircraft or different simulation devices are complex and confusing. One commenter objected to a minimum time requirement for maintaining currency using a simulation device, asserting that the amount of time necessary to complete the prescribed tasks is sufficient.

Eight commenters objected to the fact that the requirements for maintaining currency using a simulation device are greater than the requirements for maintaining currency in an aircraft. Four commenters asserted training using a simulation device is at least as valuable as training in an aircraft. Two commenters objected to the proposed provisions permitting use of an ATD to maintain currency. One commenter asserted that no data has been presented showing that ATDs are effective in maintaining proficiency. One commenter recommended the rule require the tasks to be performed, but set no minimum training time requirement. ALPA argued that a pilot could maintain currency indefinitely by using an aviation training device for three hours every two months. ALPA recommended the proposed rule be supplemented with a requirement that instrument currency exercises be performed in an aircraft or using a FS or FTD within the previous eighteen months.

One commenter recommended a simpler set of requirements and an equivalency ratio, such as two approaches in a simulator being equivalent to one approach in an aircraft. Another commenter recommended the same requirements apply regardless of whether an aircraft or simulation device is used to maintain currency, but that the currency period cover the previous six months for aircraft and two months for simulation devices.

One commenter noted § 61.57(c)(4) and (5) allow pilots to use an ATD in conjunction with the aircraft, FS, or FTD for instrument currency, but eliminated the two month limitation as long as certain requirements are met in the aircraft, FS, or FTD. The commenter thought this could be more simply accomplished by adding to § 61.57(c)(3) ''or six months if one hour of instrument time has been accomplished in an aircraft, flight simulator, or flight training device.''

One commenter asserted that the provisions are unlikely to be used because a proficiency check can be accomplished in less time and at less cost in an AATD. One commenter asserted the level of detail specified in the rule is more appropriate to practical test standards (PTS) and argued that instructors should have discretion over specific maneuvers to be performed.

One commenter argued there is no evidence that pilots satisfying instrument currency requirements in aircraft or simulation devices are proficient to operate in IMC. Two commenters generally objected to the proposed requirements for maintaining instrument currency using a flight simulator, flight training device, or aviation training device. One commenter asserted that the proposed requirements increase the burden on pilots without justification in the form of accident history or research.

Six commenters asserted steep turns should not be included in requirements for maintaining instrument currency in a flight simulation device, arguing that ATDs and flight training devices do not accurately simulate the flight characteristics and control feel for steep turns. The FAA acknowledges the comments received about this proposal. The FAA is allowing different means to maintain instrument currency. The pilot may use whatever method best suits his or her needs to maintain instrument currency by using the actual aircraft, flight simulator, flight training device, or aviation training device, or a combination of all.

One commenter objected to the unusual attitude recovery parameters prescribed by the proposed rule. The commenter noted that if the aircraft is at V_{NE} and descending, it is still accelerating and will exceed V_{NE}, thus triggering a failure. Similarly, if an aircraft is at stall speed and ascending, it is already stalling. The commenter suggested the language of the practical

test standards prescribing recovery from unusual attitudes (both nose-high and nose-low) is preferable. Another commenter noted V_{NE} is not an appropriate specification for all aircraft. We believe that instrument currency tasks, involving unusual attitude recovery parameters are for maintaining instrument currency and can be achieved in aviation training devices. We are not revising the instrument currency tasks in aircraft, flight simulators, and flight training devices. The instrument currency tasks, involving unusual attitude recovery parameters are for maintaining instrument currency in aviation training devices, and the FAA believes this task is appropriate.

One commenter asserted that the requirements of proposed § 61.57(c)(4) include all of the requirements of § 61.57(c)(2) or (3), plus one hour of cross country time in the aircraft. In other words, a pilot completing the requirements of § 61.57(c)(4)(ii) will have already met the requirements of § 61.57(c)(2) or (3). The commenter argued that § 61.57(c)(4) is redundant and should be eliminated. The same commenter argued that proposed § 61.57(c)(5) is redundant to § 61.57(c)(3) and should be eliminated. Three commenters noted that the steep turns requirement has been removed from the instrument rating PTS. Fifteen commenters objected to the proposed provision requiring use of a view-limiting device when using a flight simulation device to maintain instrument currency, because such devices can be configured not to provide visual cues. The FAA acknowledges the comments received about this proposal. We are not revising the instrument currency tasks. The FAA is allowing different means to maintain instrument currency and the pilot may use the means best suited for his or her needs.

The FAA also acknowledges the comments received on recommending the rule use the terms ''basic aviation training devices'' (BATD) and ''advanced aviation training devices'' (AATD). The terms ''basic aviation training device'' (BATD) and ''advanced aviation training device'' (AATD) as being aviation training devices (ATD) are defined in AC 61–TD ''FAA Approval of Basic Aviation Training Devices and Advanced Aviation Training Devices.''

The FAA is allowing different means to maintain instrument currency. The pilot may use whatever method best suits his or her needs to maintain instrument currency by using the actual aircraft, flight simulator, flight training device, aviation training device, or a combination of all. Furthermore, the use of flight simulators and flight training devices has always been allowed for pilots to maintain their instrument currency so we are not making new rules. ATDs are relatively new; yet the FAA has determined that the technological advancements of these devices make their use for maintaining instrument currency also possible.

Regarding the comment on unusual attitude recovery parameters prescribed by the proposed rule, we previously answered this question this way: ''Reference § 61.51(g)(3)(ii) and § 61.57(c)(1); Provided the person is instrument current or is within the second 6-calendar month period'' (*See* § 61.57(d) for currency). A person would not need a flight instructor or ground instructor present when accomplishing the approaches, holding, and course intercepting/tracking tasks of § 61.57(c)(1)(i), (ii), and (iii) in an approved flight training device or flight simulator. Only when a person is required to submit to an instrument proficiency check must a flight instructor or ground instructor be present.

The rationale is that a person is not required to have a flight instructor or ground instructor present when performing the approaches, holding, and course intercepting/tracking tasks in an aircraft. If the person is using a view-limiting device (*i.e.,* hood device) when performing the approaches, holding, and course intercepting/tracking tasks in an aircraft, only a safety pilot is required to be present. If a person is performing approaches, holding, and course intercepting/tracking tasks in an aircraft in IMC, it is permissible to log the tasks without a flight instructor being present.

Therefore, a person who is instrument current or is within the second 6-calendar month period (*See* § 61.57(d) for currency) need not have a flight instructor or ground instructor present when accomplishing the approaches, holding, and course intercepting/tracking tasks of § 61.57(c)(1)(i), (ii), and (iii) in an approved flight training device or flight simulator.

31. This revision of § 61.57(d) clarifies when a person must perform an instrument proficiency check to act as the PIC under IFR or in weather conditions less than the minima prescribed for VFR

This final rule amends § 61.57(d) to clarify when a person, who has not met the instrument recent flight experience of § 61.57(c), must perform an instrument proficiency check to act as the PIC under IFR or in weather conditions less than the minima prescribed for VFR. Revised § 61.57(d) requires a pilot who has not complied with the instrument recent experience requirement of § 61.57(c) within the twelve calendar months preceding the month of the flight to complete an instrument proficiency check to regain PIC instrument qualifications. The proficiency check will have to be performed in the aircraft category that is appropriate to the instrument privileges desired. The instrument proficiency check consists of operation areas and tasks listed for an instrument proficiency check in the practical test standards (PTS).

As noted in our earlier discussion of revised § 61.57(c), we will require a pilot to have performed and logged the instrument recent flight experience within the preceding six calendar months preceding the month of the flight in order to act as the PIC under IFR or in weather conditions less than the minima prescribed for VFR. Under revised § 61.57(d), if the pilot has not performed and logged the required instrument recent flight experience within the six calendar months preceding the month of the flight, the pilot is given an additional six calendar months to perform and log the required instrument recent flight experience. However, during this six-calendar month period, the pilot may not act as the PIC under IFR or in weather conditions less than the minima prescribed for VFR until the pilot has performed and logged the required instrument recent flight experience of revised § 61.57(c). If during this six-calendar month period, the pilot does not accomplish the required instrument recent flight experience, then he/she must perform an instrument proficiency check to regain his/her instrument currency.

Two commenters generally supported the proposed clarifications. One commenter supported the use of the instrument rating PTS as a guide for the proficiency check. One commenter questioned whether the preamble (*i.e.,* proposal No. 31) is meant to indicate proficiency checks may no longer be performed using a simulator or flight training device, but may now only be performed in an aircraft.

Two commenters were concerned that § 61.57(d) will be interpreted as requiring an entire instrument rating practical exam to satisfy the instrument proficiency check requirements. One commenter recommended the check consist of tasks required by the instrument practical test standards. One commenter objected to the language requiring that an instrument proficiency

check (IPC) requires an instrument rating practical test. The commenter argued that the requirement would limit instructors' discretion and that completion of an IPC in aircraft lacking certain equipment would be difficult. The revision to § 61.57(d) concerning the instrument proficiency check does not prohibit the use of a flight simulator or flight training device for performing an IPC check, nor did the proposal in the NPRM propose eliminating use of FS or FTDs for performing an IPC. An FS or FTD may be used for accomplishing an IPC if the training device is approved for performing an instrument proficiency check. The content of an instrument proficiency check is addressed on page 16 of the Instrument Rating Practical Test Standards.

32. This revision of § 61.57(f) establishes a recent flight experience requirement for acting as PIC in a night vision goggle operation

Revised § 61.57(f) establishes as a recent flight experience requirement to remain PIC qualified for night vision goggle (NVG) operations. To understand ''NVG operations,'' it is necessary to further clarify the term ''flight.'' ''Flight'' means a takeoff and landing, with each landing involving a flight in the traffic pattern. For example, a person who performs six takeoffs and landings, with each landing involving a flight in the traffic pattern, and uses NVGs to maintain visual reference may log six ''NVG operations.''

For a pilot to act as PIC using NVGs with passengers on board, the pilot, within the preceding two calendar months, will have to perform and document the tasks under new § 61.57(f) as the sole manipulator of the controls during the time period beginning one hour after sunset and ending one hour before sunrise. If the pilot has not performed and logged the tasks under § 61.57(f), then the FAA will allow the pilot an additional two calendar months to perform and log the tasks under § 61.57(f). However, the pilot will not be allowed to carry passengers during this second two-month period. If the pilot still has not performed and logged the NVG tasks in revised § 61.57(f) during those additional two calendar months, then the pilot will be required to pass a NVG proficiency check to act as PIC using night vision goggles.

Two commenters asserted existing §§ 61.51(b) and 61.57(b) are adequate to address logging and recency of NVG time, and this rule only requires adding ''while using night vision goggles.'' The commenters further argued existing § 61.57(a)(3) is adequate to address use of a flight training device or flight simulator for NVG recency. Two commenters argued that the currency interval should be ninety days instead of two months to correspond with the existing night flight currency interval.

The FAA acknowledges the comments received about this proposal. We are adopting the above revisions for the final rule.

33. This revision of § 61.57(g) establishes a NVG proficiency check requirement to act as PIC of a night vision goggle operation

Revised § 61.57(g) establishes a proficiency check to be PIC qualified for NVG operations. This revision also establishes a proficiency check to regain PIC qualifications for NVG operations when the pilot's NVG privileges have lapsed.

Revised § 61.57(g) will require a pilot who has not complied with the NVG operating experience requirement of revised § 61.57(f) to complete a NVG proficiency check to regain PIC NVG qualifications. The proficiency check will have to be performed in the same aircraft category that is appropriate to the NVG operation desired. The proficiency check will consist of the tasks listed in revised § 61.31(k) and will be administered by an individual listed under § 61.31(k).

American Eurocopter and HAI each supported the proposed requirement to restore lapsed NVG currency. The commenters recommended that proficiency check requirements be set forth in the PTS, with an interim advisory circular (AC) issued because the standards for NVG and non-NVG maneuvers are the same. The commenters also recommended proficiency checks be administered by a qualified instructor, Examiner, or inspector, as applicable under parts 61, 141 or 142, to an air carrier employee in accordance with the carrier's approved training program, or to a military check pilot.

The FAA acknowledges the comments received on this proposal. The rule (§ 61.57(g)(1) through (6)) clearly establishes the qualifications of the person who can administer the NVG proficiency check; therefore, the rule does not need further clarification.

34. This proposed change to § 61.59 would have paralleled this section with the language contained in § 67.403

We had proposed to revise § 61.59 to parallel it with the existing § 67.403. However, we have reconsidered this proposal and the existing § 61.59 will remain without change.

Four commenters objected to the proposed changes, arguing the existing rule already prohibits submission of fraudulent or intentionally false data, and that the proposed rule will allow the FAA to deny or revoke privileges for an inadvertent inaccuracy. One commenter also noted the proposed rule does not parallel § 67.403 because that section includes a requirement that the FAA rely on incorrect data. One commenter also asserted that the proposed rule could effectively invalidate existing regulatory requirements for recording flight experience.

The FAA acknowledges the comments received on the proposal. We agree that trying to parallel the language of § 61.59 and § 67.403 raises additional concerns. The implications of incorrect information in the context of part 61 certification are different than those in the context of medical certification under part 67. Therefore, existing § 61.59 remains without change.

35. This revision of § 61.63 changes the format and re-structures rule

This final rule simplifies the format and structure of § 61.63, and moves paragraphs (e), (f), and (g) (addressing usage and limitations of the flight simulator and flight training device) to new § 61.64. This final rule also revises § 61.63(c)(3) to clarify applicability to those applicants holding only a lighter-than-air (LTA)-Balloon rating and who seek an LTA–Airship rating. Currently, the word ''only'' does not appear in § 61.63(c)(3).

This final rule has made minor revisions to § 61.63(d) to clarify the requirements for an additional type rating and a type rating sought concurrently with an additional aircraft category and class rating. We have also revised existing paragraph (h) in § 61.63 and re-designated it as paragraph (e). Furthermore, re-designated § 61.63(e) clarifies the pilot certification procedures for aircraft used on a practical test for a type rating. Such aircraft cannot be used for instrument maneuvers and procedures for the issuance of a type rating with a VFR limitation under these circumstances.

This final rule revises paragraph (i) in § 61.63 and re-designates it as § 61.63(f). This re-designated § 61.63(f) clarifies that an applicant for a type rating in a multiengine airplane with a single-pilot station must perform the practical test in the multi-pilot seat version of that multiengine airplane. Alternatively, the practical test may be performed in the single-seat version of that airplane if the Examiner can observe the applicant during the practical test when there is

no multi-seat version of the multiengine airplane. This revision parallels the same requirements in revised § 61.157(h) (existing § 61.157(k)) for a type rating in a multiengine airplane with single-pilot station.

This final rule revises existing paragraph (j) of § 61.63 and re-designates it as § 61.63(g). Re-designated § 61.63(g) clarifies that an applicant for a type rating, at other than airline transport pilot (ATP) certification level, for a single engine airplane with a single-pilot station must perform the practical test in the multi-pilot seat version of that single engine airplane. Alternatively, the practical test may be performed in the single-seat version of that airplane if the Examiner is in a position to observe the applicant during the practical test in the case where there is no multi-seat version of that single engine airplane. This revision parallels requirements under new § 61.157(i) (existing § 61.157(l)) for a type rating in a single engine airplane with single-pilot station at the ATP certification level.

Revised § 61.63(i) permits an Examiner who conducts a practical test for an additional aircraft rating under this section to waive any of the tasks for which the FAA has approved waiver authority. This revision parallels the revised requirements of § 61.157(j) (existing § 61.157(m)) at the ATP certification level.

Two commenters agreed the FAA should make changes to § 61.63, but asserted the proposed changes to § 61.63 and new § 61.64 offer no improvement. One commenter questioned whether safety would be enhanced by the proposed changes. Another commenter objected to the proposed changes to § 61.63 and the creation of § 61.64, asserting that the proposed rules eliminate ways for an applicant to qualify for all-simulator training. The commenter questioned the elimination of the provisions in question and requests justification in the form of safety data indicating a danger posed by pilots using the existing provisions.

One commenter requested clarification of the new phrase ''training time and iteration requirements'' in § 61.63(c)(3). The commenter stated this language does not clearly convey that candidates seeking an additional class rating are excused from certain requirements. One commenter asserted that the proposed changes to § 61.63 and new § 61.64 would have a significant and detrimental impact on the use of flight simulators and the flight training industry and the proposed changes in new § 61.64 go beyond merely moving and simplifying existing requirements and impose significant burdens and costs without any corresponding benefit. Another commenter recommended the proposed changes to § 61.63 and new § 61.64 be withdrawn.

Two commenters observed that under proposed § 61.63(d), an applicant for a type rating is not required to successfully complete an FAA approved or accepted training program but need only acquire an endorsement from an appropriately rated flight instructor. They recommended the FAA require the use of an FAA approved or accepted training program. Eclipse Aviation suggested an authorized instructor be defined as ''a person or air agency approved by the Administrator to conduct type rating training in that make and model of aircraft.''

Training time and iteration requirements relate to the training time and iteration requirements listed in § 61.109 and § 61.129. For example, for the airplane single engine land rating at the private pilot certification level, it requires three hours of cross country flying in a single engine airplane (*See* § 61.109(a)(1)) and one cross country flight of over 100 nautical miles in total distance (*See* § 61.109(a)(2)(i)). Under § 61.63(c)(3), the applicant is not required to meet the training time and iterations requirements under this part that apply to the pilot certificate for the aircraft class rating sought Otherwise, the intent of § 61.63(c)(3) is for the flight instructor to make the decision on the amount ''training time'' and number of ''iterations'' required for the applicant to be adequately trained and be able to pass the practical test.

The FAA has reviewed the proposed changes to § 61.63 and § 61.64, and we have not found evidence that the changes will have a significant and detrimental impact on the use of flight simulators and the flight training industry. We intend only to further clarify the existing rule. In reviewing § 61.63(d), and old § 61.63(d), there is no requirement for an applicant to complete an FAA approved or accepted training program and there never has been such a requirement. As for defining an ''authorized instructor,'' it has already been done in § 61.1(b) and the privileges and limitations of a flight instructor are listed in existing § 61.193 and § 61.195.

The FAA has reviewed the changes to § 61.63 and § 61.64, and we have not found that the changes will eliminate ways for an applicant to qualify for all-simulator training. For the reasons stated, we are adopting the revision as proposed in the NPRM.

36. Establishes a new § 61.64 to address the use and limitations of flight simulators and flight training devices

This final rule adds a new § 61.64 to incorporate the use and limitations of flight simulators (FS) and flight training devices (FTD) into this one rule. These requirements were previously found in § 61.63(e), (f), and (g) (for other than ATP certification) and § 61.157(g), (h), and (i) (for ATP certification). The purpose of these changes is to clarify and simplify § 61.63 and § 61.157 and place all use and limitation requirements for simulation devices into new § 61.64.

New § 61.64(a) through (f) will clarify when an applicant may use an FS or FTD for all training, when an applicant may use a FS for all of the required practical test, when the supervising operating experience limitation on an applicant's pilot certificate is required, and when the supervised operating experience limitation may be removed.

New § 61.64(a) will allow an applicant to use a flight simulator for all training and the practical test for the airplane category, class, or type rating, provided the flight simulator and the applicant meet specific qualifications under new § 61.64(a)(1) through (3).

New § 61.64(b) allows an applicant for the airplane category, class, or type rating to use a flight training device for training only if the flight training device meets the specific qualifications under new § 61.64(b)(1) through (4). The rule further clarifies that a flight training device may not be used for any portion of the practical test.

New § 61.64(c) allows an applicant to use a flight simulator for all of the training and the practical test for the helicopter class or type rating, provided the flight simulator and the applicant meet the specific qualifications under new § 61.64(c)(1) and (2).

New § 61.64(d) allows an applicant for the helicopter class or type rating to use an FTD for training only if the device meets specific qualifications under new § 61.64(d)(1) through (4). The rule further clarifies that an FTD may not be used for any portion of the practical test.

New § 61.64 (e) states an applicant may use an FS for all training and the practical test for the powered-lift category or type rating, provided the applicant and FS meet specific qualifications under new § 61.64(e)(1) and (2).

New § 61.64(f) allows an applicant for the powered-lift category or type rating to use a flight training device for training only if the device meets specific qualifications under new § 61.64(f)(1)

through (4). The rule will further clarify that a flight training device may not be used for any portion of the practical test.

As a result of existing language in existing paragraphs (e), (f), and (g) of § 61.63 and paragraphs (g), (h), and (i) of § 61.157, there is confusion as to whether an applicant could complete all training and testing for a type rating in a simulator when there is a supervised operating experience limitation on the applicant's pilot certificate for that aircraft type rating. New § 61.64(a)(2)(i), (c)(2)(i), and (e)(2)(i) will specify that a type rating cannot contain the supervised operating experience limitation (*i.e.,* ''This certificate is subject to pilot in command limitations for the additional rating'') for an applicant to use a flight simulator for all training and testing for a type rating. A flight simulator may be used for some of the required training and testing for a type rating, but not ''all.'' The training and testing permitted in a flight simulator depends on what the flight simulator is approved for and is in accordance with new § 61.64(a)(4)(i) and (b), (c)(3)(i) and (d), or (e)(3)(i) or (f), as appropriate for the category of aircraft and type rating sought.

New § 61.64(a)(1)(iii), (c)(1)(iii), and (e)(1)(iii) establishes that at minimum a Level C flight simulator is required if an applicant wishes to use a flight simulator on a practical test for an aircraft rating. New § 61.64(a)(1)(iv), (c)(1)(iv), and (e)(1)(iv) will establish that at minimum a Level A flight simulator is required for an applicant to use a flight simulator for training.

Two commenters argued proposed § 61.64 is unclear as to intent or purpose, and there is no indication how the proposed rules would improve safety. One commenter expressed uncertainty over the level of pilot certificate affected by the proposed section. One commenter asserted that the proposed changes to § 61.63 and new § 61.64 would have a significant and detrimental impact on the use of flight simulators and the flight training industry. A commenter recommended the proposed changes to § 61.63 and new § 61.64 be withdrawn, and the text of the existing rules be maintained.

One person asserted the minimum hour requirements for type rating applicants set forth in the proposed § 61.64(a)(2) are higher than necessary to ensure safety and will deter advancement of aviation careers. One commenter argued existing §§ 61.63 and 61.157 are clear that a flight simulator or flight training device can be used to complete all training and testing for the issuance of a rating without limitations and the proposed rule is not.

Two commenters noted that under existing § 61.63 and § 61.157, a rating applicant failing to meet requirements for an exception has an option of completing certain parts of the practical test in an aircraft (rather than a simulator or flight training device), or receiving a rating with supervised operating experience limitations. The commenters objected to the provisions of the proposed rule that would require both performance of certain tasks in an aircraft and issuance of a rating with supervised operating experience limitations. Two commenters objected to the proposed changes to § 61.63 and the creation of § 61.64, asserting that the proposed rules eliminate ways for an applicant to qualify for all-simulator training and testing.

Regarding the proposed requirement that a minimum of a Level C flight simulator or Level 5 flight training device be used for the practical test for a rating, a commenter asserted that the lowest level of flight simulator or flight training device qualified and approved for training in a particular task should be acceptable. If necessary, training or testing performed with lower level simulators could trigger additional experience requirements or requirements to perform certain maneuvers in the aircraft, or result in the issuance of a rating with limitations. Three commenters opposed the proposed requirement that a minimum of a Level C flight simulator be used for the practical test for a rating. Flight Safety International recommended a Level C simulator be required only if the entire practical test is performed in the simulator. One commenter asserted that requiring a Level C simulator for a practical test conflicts with guidance contained in FAA–S–8081–5E, Practical Test Standards. The commenter also questioned whether simulators not meeting at least Level C requirements may be used for evaluations similar to practical tests, such as proficiency checks or single pilot exemption evaluations that consist of Practical Test Standards (PTS) maneuvers. Two commenters asserted the inability to use simulators not meeting Level C requirements will require more pilots to take practical tests in aircraft. The commenters stated this will negatively impact safety by requiring low altitude maneuvering, and by eliminating the ability to simulate malfunctions such as engine fires and electrical malfunctions. One commenter noted that Level A simulators have been widely used in the past, and that if no longer permitted to be used costs will increase by 15%. Two commenters noted there are some aircraft for which there is no Level C or better simulator.

Flight Safety International recommended that if the practical test is given in a simulator or flight training device qualified and approved at less than Level C, the appropriate practical test standards be used to determine which events may be credited; any events not approved for the simulator or flight training device would need to be accomplished in the aircraft. One commenter objected to the requirement that a minimum of a Level 5 flight training device be used if a flight training device is used for the practical test. The commenter asserted that this requirement is unnecessarily restrictive and not supported by the PTS or other FAA rules or guidance.

One commenter objected to the proposed provisions requiring that one of a number of prerequisites be met if any portion of the practical test for a turbojet or turboprop airplane rating is to be performed in a simulator. The commenter asserted that the existing rules only require one of the prerequisites if all training and checking is to be done in a simulator. Flight Safety International said proposed § 61.64 calls for a logbook endorsement removing the supervised operating experience limitation. If so, a pilot must present his/her logbook containing the endorsement to show that the limitation is removed, the endorsement is unnecessary.

One commenter asserted the proposed changes to § 61.63 and § 61.157 and creation of § 61.64 conflicts with other existing guidance, such as appendices E and F to part 121, the appendices of the PTS, and the General Aviation Operations Inspector's Handbook.

One commenter asserted that pilots should be permitted to credit multiengine turbojet experience toward a single engine turbojet type rating for purposes of proposed § 61.64.

Five commenters were confused whether pilots must meet one or more than one of the criteria set forth in proposed § 61.64(a)(2) and recommended the section be revised to make clear that pilots must meet only one of the requirements. Flight Safety International recommended proposed § 61.64(a)(2)(ii) and (a)(3)(ii) use language currently found in § 61.63 and § 61.157 requiring pilots complete at least 1,000 hours of flight time in two or more different airplanes requiring type ratings.

Nine commenters noted that under existing § 61.63 and § 61.157, a rating applicant failing to meet requirements for an exception has an option of completing certain parts of the practical

test in an aircraft, rather than in a simulator or flight training device, or receiving a rating with supervised operating experience limitations. The commenters believed the economic impact of the proposed rule would be severe.

One commenter asserted that the FAA and training organizations lack sufficient manpower to administer the number of practical exams in the aircraft that the proposed rule would require. This commenter recommended that instead of requiring performance of maneuvers in an aircraft, the FAA increase supervised operating experience limitations or require line oriented flight testing (LOFT) scenarios in training.

Three commenters objected to the elimination of the possibility of a fifteen hour supervised operating experience limitation. Two additional commenters recommended that the endorsement removing a supervised operating experience limitation be by a person, designated by the Administrator, familiar with the airplane and the program under which the supervised operating experience was conducted. Eclipse Aviation suggested such a person could be the manufacturer or a training center conducting training in the airplane. Two commenters recommended the supervised operating experience (SOE) requirement be event based, covering a range of operating conditions and procedures that a pilot is likely to see in actual service. Two commenters recommended a PIC observing SOE be qualified and trained as an evaluator by the manufacturer or other facility, and hold a designation by the Administrator. Eclipse Aviation asserted that the proposed provisions are insufficient to ensure that SOE will be applicable and effective for all operators of its very light jet airplanes.

Two commenters noted that under the proposed rule, a pilot with a turbojet type rating for an airplane requiring a two-pilot crew may obtain a single pilot type rating without limitations with no single pilot turbojet PIC experience and virtually no turbojet PIC experience. The commenters recommended a pilot should be required to have 25 hours of turbojet PIC time to obtain a type rating without limitations.

One commenter opposed the proposed requirement of § 61.64(a)(1)(iv) that a minimum of a Level A flight simulator be used for training for a rating. The commenter recommended the PTS address credit for the use of simulators and flight training devices.

As stated in the NPRM and this preamble, § 61.64 consolidates the use of flight simulators and flight training devices for the airplane, helicopter, and powered-lift ratings for all the pilot certification levels (*i.e.,* private, commercial, and ATP certification levels). Prior to establishing this § 61.64, the use of flight simulators and flight training devices for the airplane, helicopter, and powered-lift ratings at the private and commercial pilot certification levels were located in old § 61.63. For the ATP certification level, it was in the old § 61.157. Now, the use of flight simulators and flight training devices for all the pilot certification levels are combined into new § 61.64.

We do not find any evidence that combining the use of flight simulators and flight training devices for the airplane, helicopter, and powered-lift ratings for all the pilot certification levels into § 61.64 will have a significant and detrimental impact on the use of flight simulators and the flight training industry. The FAA has not increased the minimum hour requirements for a type rating by having consolidated the use of flight simulators and flight training devices into § 61.64.

Section 61.64(a)(4), (c)(3), and (e)(3), is the area of the rule that addresses what tasks must be performed in the actual aircraft and the provisions that require it. The purpose of the change is to further clarify the intent of the rule and no substantive changes have been made. In reviewing the proposed changes to § 61.63 and § 61.157 and creation of § 61.64 we did not see a conflict with other existing guidance, such as Appendices E and F to part 121, the appendices of the PTS, and the General Aviation Operations Inspector's Handbook.

The endorsement requirement for removing the SOE limitation is to ensure accomplishment of the required supervised operating experience. We believe the endorsement requirement received from both the supervising PIC and an Examiner will insure that supervising operating experience was completed.

As for what portion of § 61.64 applies to an applicant, the answer depends on the specifics of the applicant's aeronautical experience and the rating being applied for. Section 61.64(a)(2) establishes the requirements for a type rating in a turbojet airplane and what the aeronautical experience requirements are for that applicant to be able to use a flight simulator. We have reviewed § 61.64 and find that this rule does not eliminate commonly used ways for an applicant to qualify for all-simulator training and testing. The establishment of this rule merely consolidates the use of flight simulators and flight training devices into § 61.64. No substantive changes have been made.

In the previous version of § 61.63(e)(7), (8), and (9); (f)(7), (8), and (9); and (g)(7), (8), and (9) (and old § 61.157(g), (h), and (i)), the regulations provided that an applicant who failed to meet certain requirements could complete certain parts of the practical test in an aircraft, rather than a simulator or flight training device, or receiving a rating with supervised operating experience limitations. This option is also provided in § 61.64 (*See* § 61.64(a)(4), (c)(3), and (e)(3).

The establishment of this rule merely consolidates the use of flight simulators and flight training devices into § 61.64. No substantive changes have been made.

The FAA established for this final rule twenty-five hours as the standard for supervised operating experience (SOE) because we have determined that amount of SOE is appropriate for ensuring pilot's qualifications. If a person desires to be issued a type rating without the supervised operating experience, then that applicant has the option to complete the training and testing in the actual aircraft. The endorsements required for removal of the SOE limitation must be from the supervising PIC and Examiner.

Under the old § 61.63 and § 61.157, the regulations also required the minimum level of flight simulator be a Level C. There is no change to this in § 61.64. The requirement for use of a Level C flight simulator in new § 61.64 is nearly identical in content and substance to old § 61.63(e)(4)(i) and old § 61.157(g)(3)(i). The establishment of this rule merely consolidates the use of flight simulators and flight training devices into § 61.64. No substantive changes were made.

The requirement that a minimum of a Level 5 flight training device be used if a flight training device is used for the practical test conforms with existing FAA policy. We proposed the use of a Level 5 flight training device in the NPRM and this final rule does not change the requirement for use of a Level 5 flight training device.

The requirement that a minimum of a Level A flight simulator be used for training also conforms with existing FAA policy. The commenter's request to address credit for use of flight simulators and flight training devices in the PTS is beyond the scope of this final rule.

The FAA has reviewed § 61.64(b)(3) and finds there is not a conflict between the rule, the PTS appendix, and FAA Order 8400.10 (now FAA Order 8900.1).

Upon review of all the comments, the FAA has found that the rule as proposed in the NPRM is appropriate and has been adopted in the final rule.

37. This revision of § 61.65(d), (e), and (f) requires at least 10 hours of cross country time as pilot in command to be in the category of aircraft appropriate to the instrument rating sought

This final rule revises § 61.65 to conform the FAA's instrument rating cross country time requirements as pilot in command (PIC) with the corresponding International Civil Aviation Organization (ICAO) requirements. Revised § 61.65(d) addresses the aeronautical experience and training for the instrument-airplane rating. Revised § 61.65(e) addresses the aeronautical experience and training for the instrument-helicopter rating. Revised § 61.65(f) will address the aeronautical experience and training for the instrument-powered-lift rating. For example, ICAO Annex 1, paragraph 2.10.1.2.2 requires an applicant to log at least ten hours of cross country time as PIC in a helicopter for an instrument-helicopter rating. Currently, § 61.65(d)(1) requires at least fifty hours of cross country flight time as pilot in command and at least ten of those hours must be in airplanes for an instrument-airplane rating. The section does not account for the instrument-helicopter rating or the instrument-powered-lift rating.

Four commenters supported the proposed provisions clarifying the minimum cross country experience in a category necessary for an instrument rating. The Greater St. Louis Flight Instructor Association asserted that there is a correlation between lack of cross country experience and accidents.

Four commenters opposed the proposed provisions. One commenter objected to ''selective adherence to ICAO requirements,'' asserting that ICAO requirements should be followed wherever possible and not be selectively applied to specific types of certificates or ratings. Four commenters supported the proposed provisions clarifying the minimum cross country experience in a category necessary for an instrument rating. Two commenters, including AOPA, asserted the cost of obtaining ten hours cross country experience in a helicopter is burdensome. Two commenters stated cross country experience obtained in any aircraft type is valuable, because the principles of navigation are the same regardless of aircraft category. In response to AOPA's concern, they recommended a required minimum of fifty hours of cross country PIC in any aircraft category.

The purpose of our rule change is to parallel ICAO standards, so that U.S. pilot certification conforms to international civil aviation standards. The FAA believes it is in U.S. aviation's best interest, where possible, to meet our ICAO responsibilities and requirements and to have recognition of our instrument rating by other ICAO member States. Therefore, the FAA is adopting the revision as it was proposed in the NPRM.

38. This revision of § 61.65 adds a new paragraph (h) to allow 10 hours of the instrument training to be performed in an aviation training device (ATD)

This final rule revises § 61.65 by adding a new paragraph (h) to allow ten hours of instrument training for the instrument rating to be performed on an ATD. The instrument training may be given by the holder of a ground instructor certificate with an instrument rating or by a holder of a flight instructor certificate with an instrument rating appropriate to the instrument rating sought. The ten hours of instrument training in an ATD will be included in the twenty hours of instrument training allowed to be performed in a flight simulator or a flight training device under revised § 61.65(e).

For an ATD to be used for instrument training under revised § 61.65, the ATD instrument training, and instrument tasks will have to be approved by the FAA. The instrument training on an ATD will have to be provided by an authorized instructor. In order to receive the maximum ten hours of credit in an ATD, the person may not have logged and been credited for more than ten hours of instrument training in a flight simulator (FS) or FTD. A view-limiting device will be required to be worn by the applicant when logging instrument training in the ATD. The instrument training and instrument tasks that may be approved for performance on an ATD will be listed in revised § 61.65(f).

The FAA specifically requested comments on whether, and to what extent, we should allow use of an ATD for providing instrument training for the instrument rating. Four commenters supported the proposed provisions permitting use of a personal computer-based aviation training device (PCATD) for up to ten hours of training toward an instrument rating.

One commenter questioned the proposed provision, asserting that PCATDs are no longer widely used. Three commenters suggested the rule refer to basic aviation training devices (BATD) and advanced aviation training devices (AATD). AOPA noted currently up to 10 hours of BATD or twenty hours of AATD training may be credited toward an instrument rating, and recommended this continue to be the case. Two commenters recommended requirements for PCATDs include requirements that they be used in areas free of audible distraction or that headsets be used.

Seven commenters objected to the proposed provision requiring use of a view-limiting device when using a flight simulation device to train for an instrument rating, because such devices can be configured not to provide visual cues. One commenter suggested the rule instead require that any device used be so configured. The Greater St. Louis Flight Instructor Association opposed the proposed amendment to permit PCATDs to be used for ten hours of instrument training, as well as the use of a ground instructor for this training, arguing that the proposed requirements inadequately prepare pilots for flight in IMC and sacrifice safety in exchange for lower costs. The association further asserted that there is a significant accident rate among newly instrument-rated pilots. The association recommended three hours of actual IMC experience be required for an instrument rating.

The FAA has replaced the term ''PCATD'' (personal computer aviation training device) with the term ''aviation training device.'' As previously discussed, the definition of the term ''aviation training device'' will be defined in AC 61–TD ''FAA Approval of Basic Aviation Training Devices and Advanced Aviation Training Devices.''

We have determined the use of view-limiting devices for maintaining instrument recurrency in aviation training devices is necessary for ensuring better transferability of instrument skills and abilities between aviation training devices and the actual aircraft. The FAA agrees that the use of an aviation training device should be used in areas free of audible distraction or that headsets should be used, but does not believe that a rule is necessary. The FAA will approve and authorize the use of aviation training devices, and to those ends, we are developing an Advisory Circular and making changes to FAA Order 8900.1 to provide this information.

For years, we have permitted the use of flight simulators and flight training devices for instrument training and for use on instrument rating practical tests. Allowing ten hours of instrument training to be performed in aviation training devices is a continuation by the flight training community and FAA of this policy of accepting simulation for

use in aviation training. Furthermore, allowing ten hours of instrument training to be performed in an aviation training device conforms to existing FAA policy adopted in Advisory Circular 61–126 and FAA Order 8900.1 (*See* FAA Order 8900.1, Volume 5, Chapter 2, Section 9, page 9, paragraph 5–446 E).

39. This revision of § 61.69(a)(4) corrects a typographical error in the rule

This final rule corrects a typographical error in which the word ''or'' was erroneously deleted from § 61.69(a)(4) during the writing of the ''Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft'' Final Rule (*See* 69 FR 44866; July 27, 2004). This revision has re-inserted the word ''or'' and made a minor grammatical revision to paragraph (a)(4).

40. This revision of § 61.69(a)(6) amends the recent flight experience for tow pilots by increasing the time allowed for achieving the required currency to 24 calendar months

This final rule amends § 61.69(a)(6) for persons who serve as tow pilots for glider towing operations by increasing the time limits for when a pilot must have completed the required recent flight experience from twelve to twenty-four calendar months. This revision responds favorably to an assertion by the Soaring Safety Foundation that the existing time limits for recent flight experience may be unnecessarily onerous and cannot be supported by any accident statistics.

Four commenters supported the proposal. The FAA is adopting the revision as proposed in the NPRM.

41. This revision of § 61.73 amends certain special rules affecting U.S. military pilots and former U.S. military pilots who apply for FAA pilot certification

This final rule deletes the § 61.73(b) requirement that current and former pilots of the U.S. Armed Forces must be on active flying status within the past twelve months to qualify for a pilot certificate and rating under these special rules. Under our revision, U.S. military pilots and former U.S. military pilots may qualify for their civilian pilot certificate and ratings on the basis of their past qualifications as a U.S. military pilot, completion of the military competency aeronautical knowledge test, and accomplishment of a flight review under existing § 61.57.

This final rule adds a new § 61.73(b)(2) to clarify that the aeronautical knowledge test that military pilots are required to take is the ''military competency'' aeronautical knowledge test. It also adds a new § 61.73(b)(3) changing pilot status for qualifying for a pilot certificate and ratings under these special rules from ''pilot in command'' to pilot in the U.S. Armed Forces. The U.S. military's pilot qualification and flight time recording documents and procedures have changed since the initial establishment of § 61.73. The U.S. Armed Forces no longer issues pilot in command orders to its graduates who complete its Undergraduate Pilot Training Course. PIC status occurs when military pilots report to their permanent duty assignment and complete additional unit checkouts. However, the FAA has determined that the end-of-course test for graduation from a current U.S. military Undergraduate Pilot Training Course is similar in scope and content as the PIC order was for military pilots when § 61.73 was initially established.

This final rule adds a new § 61.73(c) to establish that a foreign military pilot of the Armed Forces of a contracting State to the Convention on International Civil Aviation who has been assigned pilot duties (for other than for flight training) with the U.S. Armed Forces may also apply for a U.S. commercial pilot certificate with comparable ratings just like U.S. military pilots can. They will no longer be required to first hold a civil pilot license from their contracting State's civil aviation authority. The FAA finds there is no safety reason for the existing requirement and foreign military pilots who are assigned to U.S. military units should be afforded the opportunity to be issued U.S. commercial pilot certificates and ratings appropriate to their military pilot qualifications.

This final rule revises § 61.73(f) and re-designates it as paragraph (e). The purpose of this revision is to further clarify that a military pilot may qualify for a type rating to be added to a pilot certificate provided there is a comparable civilian type designation of that military aircraft.

Three commenters objected to the elimination of the recency of experience requirement for military pilots seeking a civilian pilot certificate. One commenter asserted that many military pilots are not on active status. Two commenters argued there is no safety data justifying the change and suggested that pilots more than twelve calendar months separated from active flight status be required to take a knowledge examination and practical examination and the examination be self-endorsing.

One commenter asserted that military pilots may be overconfident and unwilling to recognize shortcomings in their knowledge of civilian flight operations. This person also argued that aircraft used for military training differs significantly from those used for civilian training, and training maneuvers are different.

One commenter asserted that under the existing regulations, a military pilot may receive an unrestricted commercial pilot certificate with airplane multiengine land and instrument airplane ratings without ever having sat in a twin-engine reciprocating engine aircraft. Two commenters recommended military navigators be permitted to apply for civilian navigator certificates, just as military pilots are permitted to apply for civilian pilot certificates.

The change to this rule does not eliminate the recency of experience requirement for exercising a pilot certificate. The rules addressing recency of experience are addressed in § 61.56 and § 61.57. The change in § 61.73 only revises and clarifies the issuance of the commercial pilot certificate and ratings to current and former U.S. military pilots.

We do not disagree with the commenter's comment that a military pilot may receive an unrestricted commercial pilot certificate with airplane multiengine land and instrument airplane ratings without ever having sat in a general aviation twin engine reciprocating engine airplane. However, there is a definite distinction between holding a pilot certificate and ratings versus exercising the privileges of that pilot certificate. If a military pilot who received all of his/her training in a military twin-engine turbojet powered airplane, then it would be expected that pilot would receive specific training in a general aviation twin-engine reciprocating engine airplane before exercising the privileges of his/her pilot certificate. We have assumed that if a civilian pilot were to receive all of his/her training in one specific make and model of twin-engine reciprocating engine airplane and then attempted to fly another make and model of twin-engine reciprocating engine airplane, that pilot would also receive training in that other specific make and model of airplane before exercising the privileges of their pilot certificate. This goes to the essence of rulemaking on the establishment of standardized and safe operating practices. The FAA is adopting the revision as it was proposed in the NPRM.

42. This revision of § 61.73(g) establishes a new privilege and procedures for issuing flight instructor certificates and ratings to current and former U.S. military instructor pilots and examiners

This final rule adds § 61.73(g) establishing a new privilege and procedure for issuing flight instructor certificates and ratings to current and former U.S. military instructor pilots and military pilot examiners who can show official U.S. military documentation of being or having been designated a military instructor pilot or military pilot examiner in the U.S. Armed Forces.

The awarding of flight instructor certificates and ratings, under § 61.73(g), to current and former U.S. military pilot examiners is added to correct an oversight in the NPRM. We are correcting this mistake in this final rule and adding U.S. military pilot examiners to this privilege. All current and former U.S. military pilot examiners will have, or are, qualified as U.S. military instructor pilots. The addition of current and former U.S. military pilot examiners are more for clarification purposes than for any other reason.

Additionally, we have further revised § 61.197(a)(2)(iv) by providing an alternative procedure for current U.S. military instructor pilots and current U.S. military pilot examiners who hold FAA flight instructor certificates to renew their flight instructor certificate and ratings. This provision will require current U.S. military instructor pilots and current U.S. military pilot examiners to have completed an official U.S. Armed Forces military instructor pilot or military pilot examiner proficiency check within the preceding twelve calendar months as an alternative method for renewing their flight instructor certificate and ratings. The reason this provision is being offered only to current U.S. military instructor pilots and current U.S. military pilot examiners is because former U.S. military instructor pilots and military pilot examiners who have left the military over twelve calendar months ago would not be able to show having completed an official U.S. Armed Forces military instructor pilot or military pilot examiner proficiency check within the preceding twelve calendar months.

The FAA has made additional clarifying and editing changes to § 61.73(g)(3) which address the acceptable documents required to show evidence that a U.S. military instructor pilot or military pilot examiner completed an official U.S. military instructor pilot training course. There was troublesome language in the proposed rule (*i.e.*, § 61.73(g)(3)(iv)) with the words ''graduated'' and ''school.'' In the U.S. Air Force, Navy, Marine Corps, and Coast Guard, the official training location for instructor pilot training is at the command level or local unit level. This is different than how the U.S. Army qualifies its instructor pilots and military pilot examiners where the official qualification training is all conducted at Ft. Rucker, Alabama. The Air Force, Navy, Marine Corps, and Coast Guard official instructor pilot and military pilot examiner training courses are performed at numerous locations throughout the United States and the world where units are located. Additionally, we have consolidated the proposed § 61.73(g)(3)(ii) and (iii) into paragraph (ii) because both paragraphs read nearly identical.

The FAA has decided that where a current or former U.S. military instructor pilot or U.S. military pilot examiner already holds an FAA flight instructor certificate, they do not have to undergo another knowledge test as required by § 61.73(g)(3)(i) because they already possess a flight instructor certificate.

The U.S. Department of Labor has a program that encourages governmental agencies to recognize U.S. military training and qualification. For years, the FAA has recognized the training and qualifications of U.S. military pilots and has issued FAA commercial pilot certificates, instrument ratings, and type ratings to U.S. military rated pilots who graduate from a U.S. Armed Forces undergraduate pilot training school or rating qualification course. The FAA is now establishing a procedure to issue flight instructor certificates and ratings to current and former U.S. military instructor pilots and military pilot examiners who have completed an instructor pilot or military pilot examiner course of the U.S. Armed Forces. To be issued the appropriate flight instructor certificate and ratings, a military instructor pilot or military pilot examiner will have to pass the aeronautical knowledge test in areas detailed under § 61.185(a).

This will mean that the applicant will have to pass the appropriate knowledge tests that cover the aeronautical knowledge areas on:

- Fundamentals of instructing, including the learning process, elements of effective teaching, student evaluation and testing, course development, lesson planning, and classroom training techniques;
- The training and certification rules in part 61 that govern recreational, private, and commercial pilot certification, applicable to the aircraft category for which flight instructor privileges are sought; and
- The training and certification rules in part 61 that govern the aeronautical knowledge areas for the instrument rating applicable to the category for which instrument flight instructor privileges are sought.

As previously discussed, showing a current flight instructor certificate will suffice for the aeronautical knowledge test report. Additionally, a current or former U.S. military instructor pilot or military pilot examiner is required to show the documentation described in revised § 61.73(g)(3) to an FAA Aviation Safety Inspector, FAA Aviation Safety Technician, or an authorized Examiner (*i.e.*, an Examiner authorized to issue the flight instructor certificate and rating(s) to U.S. military instructor pilots or U.S. military pilot examiners).

Thirty-seven commenters questioned the documentation requirements for issuance of a certificate under the proposed provision. The commenters objected to the requirement of a certificate of graduation from a formal training course, because such certificates are not uniformly issued, or may be lost or discarded. These commenters recommended accepting other documentation of graduation from a instructor pilot training school, such as the Department of Defense Form-214, which is standardized across all branches, Air Force Form 5 or Air Force Form 8, output from the U.S. Air Force Aviation Management Resource System, U.S. Navy check form 3760, a Navy aviator logbook, or a grade book. Three commenters recommended that the provision apply to former instructor pilots and current instructor pilots by using language parallel to paragraphs (b) and (d). One commenter recommended that instructor pilots be permitted to apply for a civilian instructor certificate for a period of 12 months after separation from service.

Sixteen commenters objected to the proposed provision. Two commenters asserted that, because of the impact they may have on their students, the criteria for receiving an instructor certificate should be rigorous and stringently enforced. Two commenters asserted that any cost savings resulting from the proposal do not outweigh the potential sacrifice of safety. One commenter asserted that an influx of former military instructors would impact the job market for civilian trained flight instructors.

One commenter asserted that, although military pilots undergo

intensive training, it is narrowly focused on specific aircraft and types of operations. The commenter recommended that civilian instructor certificates issued to instructor pilots without a practical test be limited to the aircraft types for which the instructor pilot holds military instructor authorizations. Alternatively, the commenter recommended that instructor pilots be required to undergo a practical test including the commercial PTS maneuvers in the category and class of aircraft in which they wish to instruct. Eight commenters asserted that military instructor pilots generally do not have experience with primary training or reciprocal engine-powered aircraft. Eighteen commenters stated that military instructor pilots are not required to know or perform maneuvers or standards required for civilian certificates and ratings. Four commenters recommended that instructor pilots seeking civilian certification be required to have some minimum experience in the aircraft used for instruction, including an introduction to maneuvers such as lazy eights, chandelles, and spins.

Regarding appropriate documentation for showing qualifications as a U.S. Armed Forces instructor pilot and pilot examiner, § 61.73(g)(3) and § 61.73(h) state ''an official U.S. Armed Forces record;'' therefore, the DD Form-214, Air Force Form 5 or Air Force Form 8, Navy Check Form 3760, a Naval Aviator Logbook, or a grade book will suffice as an ''official U.S. Armed Forces record.'' We understand the U.S. military changes the number of its forms from time to time. If the form is ''an official U.S. Armed Forces record'' that shows the person is qualified as a U.S. military pilot or U.S. military instructor pilot or military pilot examiner, as appropriate, and the person's military pilot or instructor pilot or military pilot examiner qualifications and ratings can be extrapolated from that form or combination of forms, then an ''official U.S. Armed Forces record'' will suffice.

We agree that former U.S. Armed Forces instructor pilots should be allowed to apply for flight instructor certificates and ratings. Therefore, we have revised § 61.73(g) to include both current and former U.S. military instructor pilots or former and current U.S. military pilot examiners may apply for and be issued a flight instructor certificate. We have not restricted this provision to just former military instructor pilots and former military examiners who have been separated from the military within the preceding 12 calendar months, because we have decided to extend this to all current and former U.S. military instructor pilots and military pilot examiners.

We disagree with the commenters' assertions that allowing military instructor pilots to apply for a flight instructor certificate under this alternative certification method of § 61.73 will diminish the standards of the FAA flight instructor certificate. U.S. military instructor pilots and military pilot examiners undergo rigorous and demanding training and are required to be knowledgeable about part 61 and part 91. Even though U.S. military instructor pilots and military pilot examiners may not undergo the same kind of training and testing as a civilian flight instructor or FAA designated pilot examiner, we have determined that U.S. military instructor pilots and military pilot examiners do receive equivalent training and testing as civilian flight instructor applicants. Some of those equivalent aeronautical knowledge areas involve testing on the following subject matters:

- Fundamentals of instructing, including the learning process, elements of effective teaching, student evaluation and testing, course development, lesson planning, and classroom training techniques;
- The training and certification rules in part 61 that govern recreational, private, and commercial pilot certification, applicable to the aircraft category for which flight instructor privileges are sought; and
- The training and certification rules in part 61 that govern the aeronautical knowledge areas for the instrument rating applicable to the category for which instrument flight instructor privileges are sought.

The FAA is not ''giving away'' the flight instructor certificate, because all U.S. military instructor pilot and military pilot examiners will be required to meet the certification requirements of § 61.73(g).

We also disagree that some military instructor pilots and military pilot examiners may not have the experience flying or flight instructing in general aviation aircraft. In fact, many have vast amounts of training, experience, and skills that we believe will be equally beneficial to training civilian pilots.

Civilian flight instructors usually receive training in one specific make and model of general aviation aircraft when receiving training for their flight instructor certificate and then take their practical test in that make and model of general aviation aircraft. However, once the person receives his/her flight instructor certificate, it allows flight instructor privileges for giving flight training in various makes and models of general aviation aircraft, in accordance with that person's flight instructor certificate and ratings. Standard insurance practices in the flight training community require civilian flight instructors to have so much flight experience in a specific make and model of aircraft to meet the flight training operator's insurance requirements. Military instructor pilots who earn their flight instructor certificate under this revision to § 61.73(g) will be allowed to give flight training in the various makes and models of general aviation aircraft, in accordance with their flight instructor privileges and ratings. However, those same insurance requirements will also apply to military instructor pilots when giving flight training in a specific make and model of general aviation aircraft. Accordingly, we do not believe there is safety issue here, and the FAA is adopting the revision as it was written. We are not comparing the way the civilian flight training community trains and qualify flight instructors with how the U.S. military trains and qualify its military instructor pilots. Rather, the FAA has made a determination that the way the U.S. military trains and qualify its military instructor pilots and with the addition of requiring military instructor pilots to pass a knowledge test, as required by § 61.73(g)(3)(i), will provide a equivalent level of certification.

Some commenters have asked if military pilots who have been designated as ''Unit Trainers'' and have never graduated from an official U.S. Armed Forces' instructor pilot training course will be afforded this privilege of earning a flight instructor certificate and rating(s) under § 61.73(g). The answer is no. The only U.S. military instructor pilots and military pilot examiners who will be allowed to apply for a flight instructor certificate and rating(s) under this provision in § 61.73 are those current and former U.S. military instructor pilots and military pilot examiners who can show having passed an official U.S. Armed Forces' instructor pilot training course. This requirement would eliminate from consideration those military pilots who have been designated as ''Unit Trainers'' and have never passed an official U.S. Armed Forces' instructor pilot or military pilot examiner training course.

Furthermore, this provision of § 61.73(g) allowing current and former U.S. military instructor pilots and military pilot examiners to apply for an FAA flight instructor certificate is also afforded to those current and former U.S. military instructor pilots and military pilot examiners who serve or

have served in the National Guard and Reserves units of the U.S. Army, Air Force, Navy, Marine Corps, and Coast Guard.

43. This revision of § 61.73(h) clarifies, simplifies, and lists the documents required for proving rated U.S. military pilot status to qualify for FAA pilot certification

Revised § 61.73(h) clarifies, simplifies, and lists the documents required for proving a current or former rated military pilot is qualified for FAA pilot certification. This revision was developed in response to many inquiries over the years that were received by the FAA on what documents are required to show proof as a rated military pilot in the U.S. Armed Forces.

Five commenters supported the proposed clarification. One commenter asserted the clarification would prevent ''FSDO shopping'' by military pilots. Two commenters recommended that pilots separated from active flight status for more than twelve months be required to undergo knowledge and practical tests.

The FAA acknowledges the supportive comments received on this proposal.

44. This revision of § 61.75(a) and (b) requires that a foreign pilot who applies for a U.S. private pilot certificate on the basis of the person's foreign pilot license must hold at least a foreign private pilot license

Revised § 61.75(a) and (b) will require that a foreign pilot who applies for a U.S. private pilot certificate hold at least a foreign private pilot license. Before the August 4, 1997 amendments to part 61 (Amendments Nos. 1–47, 61–102, 141–8, and 143–6; 62 FR 16220–16367; April 4, 1997), § 61.75 provided that to apply for a U.S. pilot certificate on the basis of a foreign pilot license, the pilot had to hold a foreign pilot license at the level of private pilot certificate or higher. The foreign pilot license must be issued by an ICAO member State. Under the 1997 Amendments, the requirement that the foreign pilot license to be at the level of private pilot certificate or higher was deleted without considering that there are some foreign countries that issue pilot certificates below the private pilot license (*i.e.*, recreational pilot licenses, sport pilot licenses, or private pilot licenses with a limitation that restricts a pilot from exercising the foreign pilot license to a particular foreign country). (*See* 62 FR 16257 and 16321; April 4, 1997.) Therefore, this final rule revises § 61.75(a) and (b) to clarify that the foreign pilot license used to apply for the U.S. private pilot certificate under the provisions of this section must be at a private pilot license level or higher, without geographical restrictions, or otherwise meet at least the private pilot licensing requirements of ICAO Annex 1.

45. This revision of § 61.75(b)(3) permits the issuance of a U.S. private pilot certificate to foreign pilots who hold a U.S. student pilot certificate

This final rule revises § 61.75(b)(3) to clarify that a person who holds a foreign pilot license (when the foreign civil aviation authority that issued the foreign pilot license is a member State to ICAO) may apply for a U.S. private pilot certificate if that person holds a U.S. student pilot certificate.

Prior to the 1997 final rule (Amendments Nos. 1–47, 61–102, 141–8, and 143–6; 62 FR 16220–16367; April 4, 1997), § 61.75(b)(3) allowed a U.S. pilot certificate to be issued to the holder of a foreign pilot certificate if ''he [did] not hold a U.S. pilot certificate of private pilot grade or higher.'' When the FAA amended § 61.75(b)(3), it deleted the words ''of private pilot grade or higher'' to accommodate the recreational pilot certificate without considering that this change apparently eliminated persons who hold a foreign pilot license from being able to hold U.S. student pilot certificates. This was unintentional. Thus, under this revision, we are clarifying that a person who holds a foreign pilot license may also hold a U.S. student pilot certificate and still apply for a § 61.75 U.S. private pilot certificate. Furthermore, it should be understood that persons who hold a foreign pilot license may also apply for and receive a U.S. pilot certificate through the standard part 61 pilot certification process or under the special provisions and procedures of § 61.75.

46. This revision of § 61.75(c) clarifies that an aircraft rating on a pilot certificate based on a foreign pilot license is issued for private pilot certificate privileges only

This final rule revises § 61.75(c) to clarify that an aircraft rating on a U.S. pilot certificate that was issued on the basis of rating(s) held on the person's foreign pilot license is issued for private pilot privileges only. Before the 1997 Amendments (Amendments Nos. 1–47, 61–102, 141–8, and 143–6; 62 FR 16220–16367; April 4, 1997), a person who held a commercial pilot license or higher level foreign pilot license issued by an ICAO contracting State could apply for and be issued U.S. commercial pilot certificate with the appropriate ratings. When § 61.75 was amended, the rule provided for the issuance of a U.S. pilot certificate at the private pilot certification level only. Specifically, § 61.75(a) permitted a holder of a foreign pilot license issued by an ICAO contracting State to ''apply for and be issued a private pilot certificate with the appropriate ratings when the application is based on the foreign pilot license.'' However, there is some confusion whether § 61.75(c) applies to additional ratings for those foreign pilots who were issued U.S. pilot certificates under § 61.75. Therefore, to further clarify § 61.75(c) and its conformity to existing § 61.75(a), limiting issuance of the U.S. pilot certificate to the private pilot certificate, this final rule adds the phrase ''for private pilot privileges only'' to § 61.75(c).

One commenter opposed the proposed provision, asserting that foreign commercial pilots should be eligible for FAA commercial pilot certificates. The essence of the rule change is merely to further clarify the intent of the rule and no substantive changes have been made. Therefore, the FAA is adopting the revision as proposed in the NPRM.

47. This revision of § 61.75(e) corrects an error in the rule that states ''U.S. private pilot certificate'' when it should state ''U.S. pilot certificate''

Before the last major change to part 61 (Amendments Nos. 1–47, 61–102, 141–8, and 143–6; 62 FR 16220–16367; April 4, 1997), the FAA had issued U.S. commercial pilot certificates to holders of foreign commercial pilot licenses or higher who applied for our U.S. commercial pilot certificate and ratings on the basis of § 61.75. When the FAA amended paragraph (e) under § 61.75, the rule was changed to read a person who receives a ''U.S. private pilot certificate.'' The rule, however, needs to account for those outstanding foreign pilots who hold U.S. commercial pilot certificates. Therefore, the final rule revises § 61.75(e), (1), (4), (f), and (g) accordingly.

48. This revision of § 61.77 clarifies the requirements for issuance of Special Purpose Pilot Authorizations

This final rule revises various paragraphs in § 61.77 to address confusion about the special purpose pilot authorizations and correct some inconsistencies. The special purpose pilot authorization is a letter issued by the FAA to a foreign pilot for the purpose of performing pilot duties on a civil aircraft of U.S. registry that is leased to a person who is not a citizen

of the United States for the purpose of carrying persons or property for compensation or hire.

Since § 61.77 was last revised under the 1997 amendments (Amendments Nos. 1–47, 61–102, 141–8, and 143–6; 62 FR 16220–16367; April 4, 1997), there has been confusion as to whom could be issued a special purpose pilot authorization and what kind of operations are permitted under a special purpose pilot authorization. For example, the FAA discovered that a foreign corporate operator was issued special purpose pilot authorizations in error. The FAA never intended that special purpose pilot authorizations be issued to foreign corporate operators who are not performing the carriage of persons or property for compensation or hire. Foreign pilots involved in part 91 operations have the ability to apply for and receive U.S. pilot certificates in accordance with § 61.75 or through the standard part 61 pilot certification process. Therefore, this final rule adds § 61.77(a)(2)(i) through (iv) to clarify what kind of operations foreign pilots are required to be performing to be eligible for a special purpose pilot authorization.

Additionally, the FAA has determined that the citizenship or resident status requirement under existing § 61.77(b)(1) conflicts with the policy authorizing holders of foreign pilot licenses to serve as pilots in U.S. registered aircraft for the kinds of flight operations covered by special purpose pilot authorizations. Thus, the citizenship or resident status requirement is unnecessary. The revision will delete the phrase ''from which the person holds citizenship or resident status'' under § 61.77(b)(1) because some pilots of foreign air carriers do not hold citizenship or resident status in the country from which they hold their pilot licenses, as is the case of U. S. citizens who serve as flight crewmembers aboard U.S. registered aircraft for foreign air carriers. Therefore, we have determined this requirement in § 61.77(b)(1) is burdensome and unnecessary.

Furthermore, this final rule deletes § 61.77(b)(5) (*i.e.*, a recent flight experience requirement under § 61.57 to be issued a special purpose pilot authorization) because the normal procedure for issuing special purpose pilot authorizations requires the foreign air carriers only to send the application and copies of the person's foreign pilot and medical licenses to the FAA and does not require the airman to appear in person to the FAA. The FAA has no way of determining whether the pilot has complied with § 61.57 currency requirements. Therefore, this final rule deletes existing § 61.77(b)(5).

49. This revision of § 61.96(b)(9) requires a person to hold either a student pilot certificate or sport pilot certificate when applying for a recreational pilot certificate

Revised § 61.96(b)(9) requires a person to hold either a student pilot certificate or sport pilot certificate to apply for a recreational pilot certificate. The FAA believes the rules implicitly require a person to hold a student pilot certificate before making application for a recreational pilot certificate. To apply for a recreational pilot certificate, an applicant must log at least three hours of solo flight time. (*See* 14 CFR 61.99(b).) To operate an aircraft in solo flight, the person must hold at least a student pilot certificate. (*See* 14 CFR 61.87(l)(1).) To avoid any further confusion, this final rule now specifies a person to hold either a student pilot certificate or sport pilot certificate before applying for a recreational pilot certificate.

One commenter supported the proposed requirement that a recreational pilot applicant hold a student pilot certificate. Four commenters asserted a recreational pilot applicant should hold either a student pilot certificate or a sport pilot certificate.

We agree that § 61.96(b)(9) be further revised to allow holding either a student pilot certificate or sport pilot certificate. We have changed the rule accordingly.

50. This revision of § 61.101(e)(1)(iii) allows for a holder of a recreational pilot certificate to act as PIC in rotorcraft with more than a 180 horsepower powerplant

Currently, holders of recreational pilot certificates are limited from acting as pilot in command (PIC) of an aircraft certificated ''with a powerplant of more than 180 horsepower.'' The purpose for the more than 180 horsepower powerplant limitation was restricting recreational pilots to slower, less complex aircraft. The FAA has determined that the 180 horsepower powerplant limitation is inappropriate for helicopters or gyroplanes. For example, the Bell 47 is a 1950-era helicopter that is simple in design and easy to fly, but some Bell 47 helicopters' engines exceed the 180 horsepower rating. This meant recreational pilots were restricted from acting as PIC of these kinds of helicopters. Therefore, this final rule revises § 61.101(e)(1)(iii) to exclude aircraft that are certificated in the rotorcraft category from the 180 horsepower powerplant limitation. The 180 horsepower powerplant limitation will only apply to aircraft certificated in the airplane category.

Additionally, we are making a correction in § 61.101 in paragraph (j) that references ''paragraph (h)'' when the rule should reference ''paragraph (i).'' This mistake was recently discovered. Paragraph (h) is a rule about the requirement for adding the notation ''Holder does not meet ICAO requirements'' to the recreational pilot certificate. Paragraph (i) is the correct rule that should be referenced in paragraph (j) as it provides the requirements for flying solo for holders of recreational pilot certificates.

51. This revision § 61.103(j) requires a person either hold a student pilot certificate, sport pilot certificate, or a recreational pilot certificate when applying for a private pilot certificate

Revised § 61.103(j) now requires a person to hold either a student pilot certificate, sport pilot certificate, or recreational pilot certificate when applying for a private pilot certificate. The rules implicitly require a person to either have a student pilot or recreational pilot certificate before applying for a private pilot certificate. To apply for a private pilot certificate, an applicant must log at least 10 hours of solo flight time (*See* 14 CFR 61.109). To operate an aircraft in solo flight, the person must hold at least a student pilot certificate (*See* 14 CFR 61.87(l)(1)). However, to address any possible confusion, this revision explicitly specifies that a person hold either a student pilot certificate, sport pilot certificate, or recreational pilot certificate in order to apply for a private pilot certificate.

Two commenters supported the proposed eligibility requirements for a private pilot certificate. Seven commenters asserted the proposed requirements for a private pilot certificate fail to address holders of sport pilot certificates and recommended that a private pilot candidate be required to hold a student pilot certificate, a recreational pilot certificate, or a sport pilot certificate.

The FAA acknowledges comments received on this proposal. The FAA agrees with the commenters who requested that § 61.103(j) be further revised to allow holding either a student pilot certificate, sport pilot certificate, or recreational pilot certificate. We have changed the rule accordingly.

52. This revision of § 61.109(a)(5)(ii), (b)(5)(ii), and (e)(5)(ii) amends the solo cross country mileage requirements for consistency with the mileage requirements under the definition of ''cross country''

This final rule revises § 61.109(a)(5)(ii), (b)(5)(ii), and (e)(5)(ii), standardizing use of the term ''cross country'' throughout part 61. Under § 61.1(b)(3)(ii), the FAA defines the distance of a cross country flight, in pertinent part, as ''more than 50 nautical miles.'' Under § 61.109(a)(5)(ii), (b)(5)(ii), and (e)(5)(ii), the regulations erroneously state, ''of at least 50 nautical miles.'' The revision amends all definitions of ''cross country'' to read ''more than 50 nautical miles.'' Four commenters supported changing the definition of cross country. One commenter asserted the change will eliminate questions regarding rounding without a significant negative impact. Nine commenters objected to the change with one arguing that the change could force performance of longer cross country flights in instances where existing airport pairings are exactly the specified number of miles apart. One commenter believed there was no compelling safety or other concerns sufficient to mandate the change, and another commenter asserted the proposed change would only provide minimal benefits.

Two commenters recommended that, rather than changing § 61.109(a)(5)(ii), (b)(5)(ii), and (e)(5)(ii), the FAA change § 61.1(b)(3)(ii) to read ''at least'' for continuity purposes. One commenter recommended that, if the definition of cross country flight is to be changed to a format of ''more than'' a number of miles, that mileages be reduced by one mile (*i.e.*, from at least 50 miles to more than 49 miles). One commenter asserted the change will eliminate rounding without a significant negative impact. One commenter asserted the costs of the change outweigh the minimal benefit resulting from changing the definition. One commenter, while opposing the change, will accept it if it would prevent issuance of a certificate stating ''Holder does not meet ICAO requirements.''

The purpose of the rule change is to correct a mistake in the former rule and no substantive changes have been made.

53. This revision of § 61.109(c)(4)(ii) amends the solo cross country distance requirement for the private pilot-helicopter rating

This final rule revises § 61.109(c)(4)(ii) so the cross country distance requirement for the helicopter rating at the private pilot certification level conforms to ICAO requirements and the FAA's cross country distance definition in § 61.1(b)(3)(v). The existing solo cross country distance requirement under § 61.109(c)(4)(ii) for the private pilot-helicopter rating states that the solo cross country flight must be ''at least 75 nautical miles total distance.'' The ICAO requirements, set forth under Annex I, paragraph 2.7.1.3.2 require that the total distance be at least 100 nautical miles total distance. Therefore, this final rule revises the private pilot-helicopter rating requirement to conform to the ICAO requirement.

Additionally, the helicopter rating for private pilot certification under § 61.109(c)(4)(ii) erroneously states ''of at least 25 nautical miles.'' This final rule revises the rules to read ''more than 25 nautical miles'' to conform to the definition of ''cross country'' under § 61.1(b)(3)(v).

Seven commenters objected to the change. The FAA already addressed many of these comments earlier in this document. The concerns included: forcing performance of longer cross country flights in cases where existing airport pairings are exactly the specified number of miles apart; no compelling safety reason; and, the costs of the change outweigh the minimal benefit resulting from changing the definition.

The essence of this rule change is to parallel our rule with ICAO standards, so that U.S. pilot certification conforms to international civil aviation standards and our private pilot certificate is recognized by the other ICAO member States. Therefore, we are adopting the revision as proposed in the NPRM.

54. This revision of § 61.109(d)(4)(ii) amends the solo cross country distance requirement for the private pilot-gyroplane rating

This final rule revises § 61.109(d)(4)(ii) to conform the cross country distance for the gyroplane rating at the private pilot certification level to the ICAO requirements for the gyroplane rating and to § 61.1(b)(3)(v). The existing solo cross country distance requirement for the private pilot-gyroplane rating states that the solo cross country flight must be ''at least 75 nautical miles total distance.'' The ICAO requirements, set forth under Annex I, paragraph 2.7.1.3.2, require that the total distance be at least 100 nautical miles total distance. Therefore, this final rule revises the cross country distance for the private pilot-gyroplane rating to conform to the ICAO's cross country distance requirement for the gyroplane rating at the private pilot certification level. Additionally, the gyroplane rating for private pilot certification under § 61.109(d)(4)(ii) erroneously states ''of at least 25 nautical miles.'' The revision amends the rule to read: ''more than 25 nautical miles'' in conformance with the definition of ''cross country'' under § 61.1(b)(3)(v).

Four commenters supported changing the definition. Seven commenters objected to the change. One commenter, while opposing the change, would accept it if it prevented issuance of a certificate stating ''Holder does not meet ICAO requirements.''

The essence of this rule change is to parallel our rule with ICAO standards, so that U.S. pilot certification conform to international civil aviation standards and our private pilot certificate is recognized by the other ICAO Member States to ICAO. Therefore, the FAA is adopting the revision as proposed in the NPRM.

55. This revision of § 61.127(b)(4)(vi) adds a requirement for ground reference maneuvers for commercial pilot certification-gyroplane rating

Revised § 61.127(b)(4)(vi) will require training in ''ground reference maneuvers'' for the gyroplane rating at the commercial pilot certification level. When the FAA amended the area of operations under § 61.127 for the gyroplane rating at the commercial pilot certification level, the reference to ''ground reference maneuvers'' was deleted. After further review, this final rule re-instates the ''ground reference maneuvers'' as an area of operation for the gyroplane rating at the commercial pilot certification level. We believe this to be an important training and certification task. The ground reference maneuvers must include at least ''eights around a pylon,'' ''eights along a road,'' ''rectangular course,'' ''S-turns,'' and ''turns around a point.''

Three commenters supported the addition of ground reference maneuvers as an area of operation for a commercial pilot gyroplane rating. One commenter did not object to the addition of ground reference maneuvers, but opposed the inclusion of specific maneuvers in the regulation while another opposed the introduction of rectangular course, S-turns, and turns around a point because these maneuvers are trained and tested at the private pilot level.

The FAA acknowledges the supportive comments received on this proposal. The one commenter's statement that the rectangular course, s-turns, and turns around a point are trained and tested at the private pilot level is accurate. However, the difference will be that the maneuvers must now be performed to commercial pilot certification standards. The FAA is

adopting the revision as proposed in the NPRM.

56. This revision of § 61.127(b)(5)(vii) deletes the requirement for the ''ground reference maneuver'' in the area of operation for commercial pilot certification-powered-lift rating

This final rule deletes ''ground reference maneuver'' area of operation under § 61.127(b)(5)(vii) for the powered-lift rating at the commercial pilot certification level. The FAA has determined that the ''ground reference maneuver'' is not appropriate for the powered-lift rating at the commercial pilot certification level.

Two commenters supported the elimination of ground reference maneuvers as an area of operation for a commercial pilot powered-lift rating. Two other commenters opposed the elimination of ground reference maneuvers. The Greater St. Louis Flight Instructor Association argued in their comments that because powered lifts exhibit the qualities of both airplanes and helicopters, maneuvers unique to both aircraft should be demonstrated. One commenter opined that since there are no certified civilian powered-lifts, there is no way to know what maneuvers are appropriate for testing. The commenter recommended no changes be made until a Flight Standardization Board (FSB) has determined if changes are required.

The FAA acknowledges the comments received on this proposal. The FAA has not completed its FSB report on any make and model of powered-lift currently under production; however, because powered-lifts have flight characteristics of both the airplane and helicopter, we have determined that training on ''ground reference maneuvers'' would not be appropriate for the powered-lift rating at the commercial pilot certification level. The FAA does not intend to require ground reference maneuvers for certification during development of its FSB report, nor do we intend to require the maneuvers for the powered-lift rating for the commercial pilot certificate. The FAA is adopting the revision as it proposed in the NPRM.

57. This revision of § 61.129(a)(3)(i) clarifies the tasks required for ''instrument training'' for commercial pilot certification-airplane single engine rating

Ever since the instrument aeronautical experience requirement was adopted under § 61.129 by the 1997 amendments (Amendments Nos. 1–47, 61–102, 141–8, and 143–6; 62 FR 16220–16367; April 4, 1997), the FAA has received questions about appropriate training for instrument aeronautical experience. Therefore, the FAA has revised § 61.129(a)(3)(i) to clarify tasks required for ''instrument aeronautical experience'' for the airplane single engine rating at the commercial pilot certification level. Under this revision, ''instrument aeronautical experience'' will include at least ''10 hours of instrument training, of which at least 5 hours must be in a single engine airplane and must include training using a view-limiting device for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems.''

Two commenters generally supported the instrument training requirements proposal. One comment supported requiring five hours of training. Six commenters objected to the unqualified requirement that a view-limiting device be used for instrument training arguing that students should be permitted to train without a view-limiting device in actual instrument meteorological conditions (IMC) if the instructor is instrument current. Four commenters recommended the rule be modified to require training in actual IMC or using a view-limiting device. One commenter recommended use of a view-limiting device at the instructor's discretion. Two commenters recommended a minimum amount of actual instrument experience be required.

The essence of the § 61.129(a)(3)(i) is to clarify tasks required for ''instrument aeronautical experience'' for the airplane single engine rating at the commercial pilot certification level. Under this revision ''instrument aeronautical experience'' will include at least ''10 hours of instrument training, of which 5 hours must be in a single engine airplane and must include training using a view-limiting device for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems.''

The purpose of this change is to further clarify the intent of the rule and no substantive changes have been made. As for the commenters' objections to use a view-limiting device and perform the instrument training in IMC, the answer is an aircraft being flown in IMC does not necessarily limit a person's vision to the outside and horizon. For example, an aircraft may be being flown between cloud layers and be considered an IMC operation; however, the pilot may be able to see outside the aircraft and see some portions of the horizon. Another example would be an aircraft being flown at night with reduced flight visibility; however, the ground lights and lighting around cities and towns would not limit a person's visual cues to the outside and horizon. The FAA has determined that requiring the use of a view-limiting device will better insure quality instrument training. The FAA is adopting the revision as proposed in the NPRM.

58. This revision of § 61.129(b)(3)(i) clarifies the tasks required for ''instrument training'' for commercial pilot certification-airplane multiengine rating

This final rule revises § 61.129(b)(3)(i) to clarify the tasks required for ''instrument training'' for the airplane multiengine rating at the commercial pilot certification level. Revised § 61.129(b)(3)(i) provides that instrument aeronautical experience must include at least ''10 hours of instrument training, of which at least five hours must be in a multiengine airplane and must include training using a view-limiting device for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems.''

Two commenters generally supported the instrument training requirements for a commercial pilot certificate and one supported the requirement for five hours of training. Five commenters objected to the unqualified requirement that a view-limiting device be used for instrument training asserting students should be permitted to train without a view-limiting device in actual IMC if instructor is instrument current. Two commenters recommended the rule be modified to require training in actual IMC or using a view-limiting device. Two commenters recommended use of a view-limiting device be at the discretion of the instructor. One commenter recommended a minimum amount of actual instrument experience be required.

Our responses to these kinds of comments were previously answered in the discussion of § 61.129(a)(3)(i) above. The essence of the change is merely to further clarify the intent of the rule and no substantive changes have been made.

59. This revision of § 61.129(c)(3)(i) allows use of a flight simulator, flight training device, or aviation training device for some of the instrument training required for commercial pilot certification-helicopter rating

Revised § 61.129(c)(3)(i) will allow instrument training required for the helicopter rating at the commercial pilot certification level to be performed in an aircraft, flight simulator (FS), flight

training device (FTD), or aviation training device (ATD). In response to questions raised by the general aviation and flight training community, the training is required to satisfy instrument training for the helicopter rating at the commercial pilot certification level. The instrument training will include at least ''5 hours of instrument training and must include training using a view-limiting device for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems.''

One commenter supported the proposed changes to the instrument training requirements for a commercial helicopter rating and two others supported the proposed changes to the language describing the instrument training required. One commenter recommended even more descriptive language providing specific maneuvers to be conducted, similar to that used for the private pilot single engine airplane requirements. One commenter supported the proposed requirement that all required instrument training be performed in a helicopter because under current rules, pilots may receive all required instrument training in another category of aircraft resulting in ineffective learning. One commenter rejected any argument that instrument helicopter training will be without cost implications, because he believes that most training helicopters are not certified for instrument flight and asserts that training for flight by reference to instruments does not require the kinds of flight instruments required under instrument flight rules (*i.e.,* § 91.205(d)). One commenter asserted that, unlike airplane pilots, helicopter pilots generally do not tend to obtain their instrument ratings before obtaining a commercial rating. Four commenters, including American Eurocopter and HAI, recommended requiring 10 hours of flight by reference to instruments. Four commenters stated the history of accidents involving inadvertent flight into IMC warrants an increase in the amount of required instrument training, rather than a decrease.

Two commenters noted commercial helicopter pilots may act in common carriage without an instrument rating without distance or other restrictions. Four commenters opposed the requirement for five hours of training on flying a helicopter solely by reference to instruments. Two commenters asserted the proposed requirement will force many commercial pilot candidates to train in larger, more expensive helicopters. AOPA asserted that pilots may have difficulty gaining access to instrument equipped helicopters or an appropriately configured simulator, flight training device (FTD), or personal computer aviation training device (PCATD). One commenter noted few helicopters used for training are equipped with more than basic VFR instruments. Another commenter asserted that since non-instrument rated pilots are not required to maintain instrument currency, any skills acquired will rapidly deteriorate and negatively impact safety by giving pilots a false impression they are qualified to fly in marginal VFR conditions. One commenter asserted the proposed rule will unnecessarily force many helicopter instructors to obtain instrument ratings. Two commenters stated the history of accidents involving inadvertent flight into IMC does not support the proposed provision because most accidents have involved instrument-rated pilots. Four commenters objected to the unqualified requirement that a view-limiting device be used for instrument training.

The commenters asserted students should be permitted to train without a view-limiting device in actual IMC if the instructor is instrument current. One commenter recommended the rule be modified to require training in actual IMC or using a view-limiting device. Three commenters recommended use of a view-limiting device be at the discretion of the instructor. American Eurocopter and HAI recommended the FAA require 10 hours of instrument instruction but permit five hours to be conducted in a simulator, flight training device or PCATD.

Under the old § 61.129(c)(3)(i), the rule required that applicants for a commercial pilot certificate for the helicopter rating receive ''10 hours of instrument training in an aircraft.'' This proposed change merely provides other methods (*i.e.,* use of a flight simulator, flight training device, or an aviation training device) for an applicant to receive instrument training. Our responses to these comments were previously answered in the discussion of § 61.129(a)(3)(i) above. We are adopting the revision as proposed in the NPRM.

60. This revision of § 61.129(d)(3)(i) allows for use of flight simulators, flight training devices, or aviation training devices for some of the instrument training required for commercial pilot certification-gyroplane rating

Revised § 61.129(d)(3)(i) reduces the number of hours of instrument training required from five to 2.5 hours and allows instrument training required for the gyroplane rating at the commercial pilot certification level to be performed in an aircraft, FS, FTD, or ATD. The FAA believes that the training for the commercial pilot-gyroplane rating will be more useful if the training focused on other tasks. We recognize that gyroplanes are normally not sufficiently equipped for instrument flight operations and are flown mostly in daytime, visual meteorological conditions.

This final rule has clarified the instrument training required to satisfy the ''instrument training'' for the gyroplane rating at the commercial pilot certification level. The instrument training will have to include at least 2.5 hours of instrument training, including training using a view-limiting device for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems.

Two commenters supported the proposed commercial pilot gyroplane rating instrument training requirements. One commenter opposed the reduction in required instrument training time from five hours to 2.5 hours, and argued alternatives to training in the aircraft make the requirement less onerous, and claimed, that training appropriate for a helicopter rating should be appropriate for gyroplanes as well. The commenter also pointed out that if five hours is completed, a pilot adding an additional class in the same category would not need any additional training time. Seven commenters stated instrument training for a commercial gyroplane rating is unnecessary and recommended its elimination. Two commenters argued the training time would be better devoted to basic flying skills since the vast majority of gyroplane operations are day VFR. These commenters added that accident history does not indicate that inadvertent flight into IMC is a significant causal factor. Three commenters noted gyroplanes are particularly unforgiving if unusual attitudes are encountered in IFR. Four commenters stated few or no gyroplanes are equipped for IFR. One commenter recommended making instrument privileges for a gyroplane rating optional, while two commenters recommended eliminating all instrument training requirements for gyroplanes. One commenter asserted a majority of pilots acquiring commercial pilot certificates with the gyroplane rating do so in order to instruct. The commenter asserted a lack of qualified instructors is a significant factor in gyroplane accidents, and that requiring instrument training for a commercial

rating creates an unnecessary obstacle to becoming an instructor.

Two commenters objected to the unqualified requirement that a view-limiting device be used for instrument training. One commenter recommended the rule be modified to require training in actual IMC or using a view-limiting device and one commenter recommended use of a view-limiting device be at the discretion of the instructor.

Under the old § 61.129(d)(3)(i), the rule required that applicants for a commercial pilot certificate for the gyroplane rating receive ''5 hours of instrument training in an aircraft.'' This proposed change merely reduces the hours requirement to 2.5 hours and provides other methods (*i.e.,* use of a flight simulator, flight training device, or an aviation training device) for an applicant to receive instrument training. Additionally, the FAA is aware that gyroplanes are not certificated for instrument flight; however, this minimal amount of instrument training is to provide pilots with some training about flying in instrument conditions to make them better skilled and alert for instrument flight conditions.

Our response to these kinds of comments were previously answered in the FAA Analysis paragraph in proposal No. 57 about § 61.129(a)(3)(i) above. The FAA acknowledges the comments received about this proposal. The FAA is adopting the revision as proposed in the NPRM.

61. This revision of § 61.129(e)(3)(i) clarifies the tasks required for ''instrument training'' for commercial pilot certification-powered-lift rating

This final rule revises § 61.129(e)(3)(i) for the powered-lift rating at the commercial pilot certification level. This revision requires at least 10 hours of instrument training, of which at least five hours must be in a powered-lift and must include training using a view-limiting device for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems.

Five commenters objected to the unqualified requirement that a view-limiting device for instrument training, arguing that students should be permitted to train without a view-limiting device in actual IMC if the instructor is instrument current. Two commenters recommended the rule be modified to require training in actual IMC or using a view-limiting device. Three commenters recommended use of a view-limiting device be at the discretion of the instructor.

Our response to these kinds of comments were previously answered in the FAA discussion of § 61.129(a)(3)(i) above. The FAA acknowledges the comments received about this proposal. We are adopting the revision as proposed in the NPRM.

62. This revision of § 61.129 for commercial pilot certification allows cross country training flights to be performed under VFR or IFR

This final rule revises § 61.129(a)(3)(iii) and (iv), (b)(3)(iii) and (iv), (c)(3)(ii) and (iii), (d)(3)(ii), (e)(3)(ii) and (iii), (g)(4)(ii) and (iii) to allow the required cross country flights for commercial pilot certification to be performed under VFR or IFR.

Previously, § 61.129 required one cross country flight in day VFR conditions and one cross country flight in night VFR conditions. Since establishing these cross country training requirements at the commercial pilot certification level, the FAA has received requests from several pilot training schools that we allow flights to be performed under IFR conditions. According to the schools, most applicants for commercial pilot certification-airplane rating and some applicants for the helicopter rating are enrolled in an instrument rating course at the same time they are undergoing their commercial pilot certification training.

Eleven commenters supported the proposed provision permitting cross country flights for commercial pilot certification to be performed under VFR or IFR conditions. Four commenters asserted training will better reflect true-to-life scenarios. Four commenters opposed the proposed provision, and three commenters stated the visual navigation skills required for VFR cross country flight should not be deemphasized. One commenter noted that under the proposed rules, a pilot could complete the cross country requirement in two flights, under IFR or VFR conditions. The commenter stated the commercial pilot certificate-helicopter candidates should be required to perform cross country flights under VFR, because helicopters typically operate under VFR.

We agree it makes sense to allow the cross country training requirements under § 61.129 to be performed under IFR conditions. The FAA agrees and is allowing the cross country training requirements under § 61.129 for commercial pilot certification for the airplane, rotorcraft, powered-lift, and airship ratings to be performed under VFR or IFR conditions.

We also agree that navigation using pilotage and dead reckoning is important; however, a commercial pilot applicant will have received VFR cross country navigation training during their training and practical test for their private pilot certificate. In the case of cross country navigation training for the commercial pilot certificate, we believe the determination of whether the cross country training is performed under VFR or IFR is best left to the needs of the applicant and the instructor's discretion. For these reasons, the FAA is adopting the revision as proposed in the NPRM.

63. This revision of § 61.129(d)(3)(iii) deletes the night training requirement for commercial pilot certification-gyroplane rating

This final rule deletes the night cross country aeronautical experience requirement under § 61.129(d)(3)(iii) for the gyroplane rating at the commercial pilot certification level. This final rule replaces the night cross country aeronautical experience requirement with two hours of flight training at night that consists of ten takeoffs and ten landings at an airport.

Nine commenters supported eliminating the night cross country experience requirement for a commercial gyroplane rating and five commenters stated the requirement presents an unacceptable risk because the open cockpits of gyroplanes require lower altitude flight with reduced gliding range and because the instrumentation of gyroplanes is limited. One commenter asserted the requirement has discouraged potential gyroplane instructors from acquiring a commercial certificate. Two commenters asserted landing proficiency is of particular importance in gyroplane operations, and the night cross country requirement should be replaced with a requirement for a minimum amount of night flight including a minimum number of takeoffs and landings. One commenter opposed elimination of the night cross country requirement arguing if it is appropriate for a helicopter rating, it should be appropriate for gyroplanes. The commenter also stated a commercial gyroplane pilot could subsequently obtain a helicopter class rating with no additional training time and no night cross country experience.

The FAA made this revision so that nighttime training for the gyroplane rating at the commercial pilot certification level will be more useful and more safely conducted in the vicinity of an airport. Gyroplanes have limited equipment and systems for

nighttime operations, and a cross country flight raises some added safety concerns in gyroplanes given its limited instrument flight and navigation capabilities. Therefore, the FAA is adopting the revision as proposed in the NPRM.

64. This revision of § 61.129 amends the commercial pilot certification solo aeronautical experience requirements to allow the aeronautical experience to be performed either solo or while performing the duties of PIC with an instructor on board

This final rule revises § 61.129(a)(4), (c)(4), (d)(4), (e)(4), and (g)(2) to allow the commercial pilot certification aeronautical experience to be conducted either solo or while performing the duties of PIC with an instructor on board. Even though the commercial pilot certification aeronautical experience requirements for a multiengine airplane rating allow the aeronautical experience requirements to be conducted either solo or with an authorized instructor on board (*See* § 61.129(b)(4)), the solo aeronautical experience requirements were purposely written differently for other aircraft categories. This is because comments received in response to Notice No. 95–11 (60 FR 41160–41284; August 11, 1995) indicated that some insurance policies prohibit persons who do not already hold the multiengine airplane category and class rating on their pilot certificate from flying solo in multiengine airplanes.

Five commenters supported the proposed provision permitting flights previously required to be performed solo with an instructor on board. One commenter stated the knowledge requirements are unchanged, and an additional pilot scanning for traffic enhances safety. Three commenters asserted that upon receiving private pilot certificates, pilots are permitted to fly solo and carry passengers, and should have no further solo flight requirements.

Thirteen commenters opposed the provision with seven arguing that solo flight contributes to the development of essential self-reliance, decision-making, and command skills. Two commenters stated that, under the proposed rules, a pilot could progress all the way to an ATP certificate with only 10 hours of solo flight early in training. One commenter recommended pilots completing a commercial certificate with zero solo time in class be issued ratings limited to second in command (SIC) privileges. One commenter suggested if it is not possible for an applicant to perform the flights solo, then dual instruction requirements should be increased. Two commenters believed the proposed provision is driven by insurance and cost concerns, rather than safety or education concerns and insurance concerns should not restrict solo flight by commercial pilot candidates. The commenter stated most commercial pilot training is performed in either a single engine fixed gear airplane or in some low performance single engine retractable gear airplane, neither of which is difficult to insure.

The Greater St. Louis Flight Instructor Association rejected the argument that flights with an instructor on board foster cockpit resource management (CRM) skills, noting that the purpose of part 61 training is to prepare pilots to fly to single-pilot standards, not to prepare them for a future airline career. The association also asserted the proposed provision subverts the intent of § 91.3, which defines the PIC as directly responsible for, and the final authority on, the operation of the aircraft. Finally, the association asserted students ostensibly acting as PIC will defer to flight instructors and Examiners.

One commenter recommended solo cross country experience be required, but that pilots working toward a commercial multiengine airplane rating be permitted to perform the flights in a single engine airplane to avoid potential insurance conflicts. Two commenters, including AOPA, recommended permitting performance of cross country flights solo or with an instructor on board and that commercial pilot candidates be permitted to perform the flights with passengers on board. One commenter recommended all pilots who hold a private or sport pilot certificate be permitted to fulfill solo flight requirements for additional certificates or ratings with an instructor on board, or while carrying passengers, arguing that carrying passengers allows pilots to share costs and expose potential future students to the experience of flight without degrading safety. Finally one commenter opposed the underlying requirement for a long cross country flight from commercial pilot candidates because it is only meant to conform to ICAO standards.

Since the adoption of § 61.129, the FAA has learned that some operators of the other categories and classes of aircraft also have the same insurance policy restrictions. Many of these aircraft operators also believe solo provisions for commercial pilot certification-multiengine airplane rating is beneficial in teaching crew resource management (CRM). These provisions permit the training to be performed solo or with an instructor on board while the applicant is performing the duties of PIC in a multiengine airplane. Some operators have said that they will be agreeable to their commercial pilot applicants practicing abnormal and emergency procedures if the applicant's instructor was on board. Therefore, this final rule provides for commercial pilot certification for the single engine airplane, helicopter, gyroplane, powered-lift, and airship ratings to be performed either solo or while performing the duties of PIC with an authorized instructor aboard.

We believe the negative comments against this proposal are more of a philosophical disagreement than a safety issue. The existing rule, § 61.129(b)(4), has permitted the commercial pilot-airplane multiengine training to be performed either solo or with an instructor on board since August 4, 1997, and there has not been any difference noted in safety or the quality of the skills and abilities of commercial pilot-airplane multiengine applicants. We believe applicants and instructors have used this training for commercial pilot-airplane multiengine applicants to achieve proficiency in crew resource management and coordination with an SIC designated pilot.

For the stated reasons, the FAA is adopting the revision as proposed in the NPRM.

65. This revision of § 61.129(g)(3)(i) clarifies the tasks required for the ''instrument training'' for commercial pilot certification-airship rating

Ever since the instrument aeronautical experience requirement was adopted under § 61.129 by the 1997 amendments (Amendments Nos. 1–47, 61–102, 141–8, and 143–6; 62 FR 16220–16367; April 4, 1997), we have received questions about what is considered appropriate training to cover instrument aeronautical experience. Revised § 61.129(g)(3)(i) clarifies the tasks required for ''instrument training'' for the airship rating at the commercial pilot certification level to include the use of a view-limiting device for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems.

There were no specific comments about this proposal on the instrument tasks required for the commercial pilot-airship rating. The comments received focused on clarifying the tasks required for ''instrument training'' for the other categories and classes of aircraft at the commercial pilot certification level.

Our responses to these kinds of comments were previously answered in

the discussion of § 61.129(a)(3)(i). We are adopting the revision as it was proposed in the NPRM.

66. This revision of § 61.153(d)(3) changes the ATP eligibility requirements for pilots who are applying for the ATP certificate on the basis of holding a foreign commercial or ATP pilot license

This final rule makes minor clarifying revisions to § 61.153(d)(3), the airline transport pilot (ATP) eligibility requirements for persons holding foreign commercial or ATP pilot licenses, by including the requirement that the foreign commercial or ATP pilot license contains no geographical limitations. The FAA has determined that a foreign applicant for the U.S. ATP certificate should not be qualified if the foreign ATP license has a geographical limitation. Although this situation very rarely (if ever) occurs, the FAA wants to clarify the rule to avoid any potential future conflicts.

67. This revision re-structures § 61.157, moves the provisions for use and limitations of flight simulators and flight training devices from the ATP flight proficiency requirements to the § 61.64, and makes other clarifying revisions

We are revising § 61.157(f) to clarify the aeronautical knowledge areas to be demonstrated during a competency test/proficiency check under air carrier operating rules for an applicant to qualify for an ATP and/or an additional aircraft rating.

For a part 135 pilot applicant, the items currently required to be demonstrated in order to qualify for such a certificate or additional rating are the aeronautical knowledge areas of § 135.293(a)(1) through (8) and the maneuvers and procedures listed in § 135.293(b), plus an instrument proficiency check as outlined in the § 135.297. Under part 121, the corresponding requirements are listed in § 121.441 and consist of the ''aircraft specific'' maneuvers and procedures listed in part 121, appendix F. The part 135 testing requirements, which include such ''generic'' knowledge areas as air traffic control procedures and meteorology in general, go beyond the requirements of part 121. An objective of this rule change, therefore, is to synchronize the testing requirements between parts 121 and 135 so that the same items are required to be tested by an applicant under either part.

Two commenters asserted the proposed changes to §§ 61.63 and 61.157 and new § 61.64 would have a significant and detrimental impact on the use of flight simulators and the flight training industry and supported the text of the existing rules.

The FAA has, by policy, typically limited part 142 training center contract Check Airmen and designated pilot Examiners to testing part 135 pilot applicants on the aeronautical knowledge area of § 135.293(a)(2) and not on the other areas listed in § 135.293(a)(1) and (3) through (8). This has sometimes caused a problem in showing that an applicant has fully met all regulatory requirements, considering that § 61.157(f)(2) specifies that these knowledge areas must be tested by ''an authorized designated pilot examiner or FAA aviation safety inspector.'' Further, the rule is silent on the role of a part 142 Training Center Evaluator (TCE), who is also a certifying official, and who may be acting in the role of contract check airman.

To ensure the rule is written correctly and in accordance with current policy and acceptable operating practices, we are revising § 61.157(f) to clarify that the part 135 competency test described in the rule means a PIC competency check involving the aeronautical knowledge areas of § 135.293(a)(2), the maneuvers and procedures listed in § 135.293(b), and the instrument proficiency check described in § 135.297. This means that a part 135 pilot applicant who accomplishes a part 135 competency/proficiency check with a part 142 training center or designated pilot examiner will be eligible for an ATP certificate or additional aircraft rating, but still must accomplish the other aeronautical knowledge areas of § 135.293(a)(1) and (3) through (8) with their company check airman or FAA Aviation Safety Inspector to meet the part 135 PIC competency check requirements. Without these requirements being completed, a part 135 pilot applicant, although having received an appropriate certificate and aircraft rating, will not meet the qualification requirements to serve as a required flight crewmember under part 135.

The rule change will also formally clarify the designee/certifying official role played by a part 142 Training Center Evaluator who is also authorized by an air carrier's Principal Operations Inspector (POI) as a contract check airman.

This final rule rewords § 61.157(g) (former paragraph (j)) and clarifies the use of an aircraft on a practical test for a type rating that is not capable of instrument maneuvers and procedures and the issuance of a type rating with a VFR limitation under those circumstances. This revision parallels the revised change under § 61.63(e).

Additionally, this revision removes paragraphs (g), (h), and (i), that provided for the use and limitations of a flight simulator and flight training device, and moves those requirements into § 61.64.

The FAA's response to the comments about this proposal related to where we moved the use and limitations of flight simulators and flight training devices from § 61.157 to § 61.64 and other clarifying changes was previously addressed above in the paragraph about the changes to § 61.63 and § 61.64. The establishment of this rule merely consolidates the use of flight simulators and flight training devices into § 61.64 and for these reasons the FAA is adopting the revision as it was proposed in the NPRM.

68. This revision of § 61.157(h) requires an applicant for a type rating at the ATP certification level in a multiengine, single-pilot station airplane to perform the requirements in a multi-seat version of that multiengine airplane

Revised § 61.157(h) will require an applicant for a type rating at the ATP certification level for a multiengine airplane with single-pilot station to perform the practical test in the multi-pilot seat version of that multiengine airplane. The practical test may be performed in the single-seat version of that airplane if the Examiner is in a position to observe the applicant during the practical test in the case where there is no multi-seat version of that multiengine airplane. This revision parallels § 61.63(f) for a type rating in a multiengine airplane with single-pilot station at other than the ATP certification level.

69. This revision of § 61.157(i) requires an applicant for a type rating at the ATP certification level in a single-engine, single-pilot station airplane to meet the requirements of this part in a multi-seat version of that single engine airplane

Revised § 61.157(i) will require an applicant for a type rating at the ATP certification level for a single engine airplane with single-pilot station to perform the practical test in the multi-pilot seat version of that single engine airplane. The practical test may be performed in the single-seat version of that airplane if the Examiner is able to observe the applicant during the practical test when there is no multi-seat version of that single engine airplane. This revision parallels § 61.63(g) for a type rating in a single engine airplane with single-pilot station at other than the ATP certification level.

70. This revision of § 61.159(c)(3) allows U.S. military flight engineers to credit flight engineer time when applying for an ATP pilot certificate

Revised § 61.159(c)(3) allows a U.S. military flight engineer to credit flight engineer time toward the aeronautical experience requirements for an ATP certificate. Under § 61.159(c)(2), a flight engineer who is employed by a part 121 operator is allowed to credit flight engineer time toward an ATP certificate. Revised § 61.159(c)(3) affords military rated flight engineers the same opportunity.

Three commenters supported the proposed provision permitting flight engineers to credit military flight engineer time toward a civilian ATP certificate. The Greater St. Louis Flight Instructor Association recommended the proposal be expanded to include all rated military flight crewmembers that perform flight related duties (*e.g.,* Naval Flight Officers, U.S. Air Force navigators, and weapons system operators (WSO)) that hold an FAA pilot certificate during the time they perform and log their experience. The FAA is adopting the revision as proposed in the NPRM.

71. This revision of § 61.159(d) and (e) conforms the ATP aeronautical experience requirements to the ICAO ATP requirements

This final rule revises § 61.159(d) and (e) for conformity to current International Civil Aviation Organization (ICAO) airline transport pilot (ATP) aeronautical experience requirements for the airplane category as stated in paragraphs 2.1.9.2 and 2.5.1.3 of the Personnel Licensing, ICAO Annex 1.

For many years, the FAA has received numerous inquiries as to whether applicants for an ATP certificate with the ICAO limitation ''Holder does not meet the pilot in command aeronautical experience requirements of ICAO'' must have 1,500 hours of total time as a pilot or 1,200 hours of flight time as a pilot as stated in § 61.159(d)(2). The current FAA regulation applies an obsolete ICAO ATP airplane aeronautical experience rule. Before 1974, ICAO only required 1,200 hours of total flight time to qualify for an ATP certificate in the airplane category. In 1974, ICAO amended its ATP aeronautical experience requirements for the airplane category to require 1,500 hours of flight time as a pilot and retained the additional qualifying aeronautical experience requirements of only permitting 50 percent of an applicant's second-in-command time to be credited with none of an applicant's flight-engineer time being credited (*see* paragraphs 2.1.9 and 2.5.1.3 of ICAO Annex 1, Personnel Licensing). This revised change harmonizes FAA regulations to ICAO's current standard.

72. This revision of § 61.187(b)(6)(vii) deletes the flight instructor-glider flight proficiency maneuver known as the ''go around'' task

This final rule deletes the flight instructor-glider flight proficiency maneuver known as the ''go around'' under § 61.187(b)(6)(vii). Understandably, a non-powered glider is not capable of performing a ''go-around'' maneuver.

One commenter supported elimination of the go around maneuver from the glider flight instructor rating requirement. One commenter opposed the removal of the go around requirement from the flight proficiency requirements for a glider instructor rating because a go around may be appropriate and applicable in a self-launching glider.

In a self-launching glider, it is possible that a pilot may have to perform a go-around maneuver. However, the FAA is attempting to establish training requirements that are most appropriate for the glider. For pilots taking training in a self-launching glider, flight instructors may want to give their students training on the go-around maneuver, and that decision will be left to the flight instructor and the student when they arrange the training that is best suited to that student's needs and wants. For these reasons, the FAA is adopting the revision as proposed in the NPRM.

73. This revision of § 61.195(c) establishes the flight instructor qualifications for providing instrument training in-flight at the commercial pilot and ATP certification levels

This final rule clarifies the flight instructor qualifications for flight instructors who provide instrument training at the commercial pilot and ATP certification levels. For example, § 61.129 requires ten hours of instrument training for the airplane-single-engine, airplane-multiengine, helicopter, gyroplane, powered-lift, and airship ratings at the commercial pilot certification levels. This final rule revises § 61.195(c) to establish that a flight instructor who provides instrument training required at the commercial pilot and airline transport pilot certification levels must hold an instrument rating on both his/her pilot and flight instructor certificates that are appropriate to the category and class of aircraft in which instrument training is being provided.

Six commenters supported the proposed requirement that instructors providing instrument training for most certificates and ratings hold instrument ratings on their instructor certificates. One commenter recommended an instrument instructor rating be required to administer instrument instruction in any context and this is FAA's past interpretation. Four commenters recommended the language of the proposed rule be revised. Three commenters asserted the proposed language appears to require an instructor to hold an instrument rating in both the category and class of aircraft, which is not possible, because instructor certificates do not have class ratings. One commenter recommended the requirement apply to an instrument rating on the instructor's pilot certificate, and an appropriate class and category rating on the instructor's flight instructor certificate. Two commenters objected to the requirement that an instructor providing instrument training for a commercial certificate hold an instrument rating on his or her instructor certificate.

The University of Oklahoma Aviation Department noted there are no instrument flight tasks in the commercial pilot training standards (PTS) and the commercial pilot instrument training requirements are very similar to those for the private pilot certificate. The university further asserted the rule will unnecessarily confine non-instrument rated instructors to teaching private pilot students, or will result in a discontinuation of instruction of commercial pilot students. Two commenters asserted an instructor with an instrument rating on his/her pilot certificate can effectively provide instrument instruction toward a private or commercial certificate. One commenter questioned whether any safety data shows that the basic instrument instruction administered by instructors not holding instrument instructor ratings has been a causal accident factor. One commenter asserted that the General Aviation Operations Inspector Handbook indicates that an instrument instructor holding a multiengine rating on his/her pilot certificate (but not on their instructor certificate) may administer instrument instruction in a multiengine airplane. This commenter further objected to the proposed ''class and category'' language of § 61.195(c), because it will prohibit this practice. Another commenter directly opposed this position because an instructor who does not hold an

airplane multiengine instructor rating should not be permitted to give any kind of instruction in a multiengine airplane.

The FAA has always made a distinction between the instructor qualifications for flight instructors who provide private pilot training of maneuvering an aircraft ''solely by reference to instruments, including straight and level flight, constant airspeed climbs, and descents, turns to a heading, recovery from unusual flight attitudes, radio communications, and the use of navigation systems/facilities and radar services appropriate to instrument flight'' as opposed to the more advanced instrument training required for commercial pilot certification. A flight instructor without an instrument rating on his/her flight instructor certificate may provide this training for private pilot certification. However, the more advanced instrument training required for commercial pilot certification requires a flight instructor who holds a flight instructor certificate with the instrument qualification. We do not find any reason to change this policy. Therefore, the FAA is adopting the revision as proposed in the NPRM.

We have reviewed the rule text language in § 61.195(c) in response to the question of whether our change now requires an instrument rating on the aircraft category and class rating of the flight instructor certificate. In § 61.5(c)(4), the rule is clear that the instrument rating on the flight instructor certificate relates to the aircraft category rating, and is not issued to the aircraft class rating. The phrase in § 61.195(c) that states ''that is appropriate to the category and class of aircraft for the training provided'' applies to the category and class of aircraft on the flight instructor holder's pilot certificate. The phrase in § 61.195(c) that states ''that is appropriate to the category * * * of aircraft for the training provided'' applies to the category of aircraft on the flight instructor holder's instrument rating and flight instructor certificate. The commenter was correct that the instrument rating is only associated with the aircraft category rating on a flight instructor certificate. However, to ensure that the flight instructor holds the appropriate instrument rating or instrument privileges on both his/her pilot certificate and flight instructor certificate, we believe this was the most appropriate way to write this rule.

The FAA disagrees that a non-instrument rated flight instructor should be able to teach the instrument training required for commercial pilot certification. The FAA expects the instrument training required for commercial pilot certification to be more advanced and requires that the flight instructor who teaches instrument training at the commercial pilot certification level hold an instrument rating on their flight instructor certificate.

In accordance with § 61.195(b)(1), a flight instructor who does not hold the appropriate airplane multiengine rating on his/her flight instructor certificate and the appropriate airplane category multiengine class rating on his/her pilot certificate may not conduct instrument training in a multiengine airplane unless that flight instructor holds the appropriate airplane category multiengine class rating on his/her pilot certificate and flight instructor certificate. A flight instructor who only holds a flight instructor certificate with an Instrument-Airplane rating and no airplane category multiengine class rating on his/her pilot certificate may not conduct instrument training in a multiengine airplane. The commenter's understanding is wrong.

74. This revision of § 61.195(d)(3) deletes the endorsement requirement on a student pilot certificate for solo flight into Class B airspace

This final rule deletes the requirement under § 61.195(d)(3) that a flight instructor must endorse a student pilot's certificate to authorize a solo flight in a Class B airspace area or at an airport within Class B airspace. Under § 61.95(a)(2) and (b)(2), a student pilot is required only to have his or her logbook endorsed when seeking authorization to perform solo flight in Class B airspace or at an airport within Class B airspace. This change will make the flight instructor endorsement requirement parallel the student pilot endorsement requirements of existing § 61.95(a)(2) and (b)(2).

75. This revision of § 61.195(k) establishes flight instructor night vision goggle qualification requirements for a flight instructor

This final rule amends § 61.195(k) to establish qualification requirements for a flight instructor to give PIC qualification and recent training for NVG operations. This final rule requires that an instructor who gives PIC qualification and NVG operations training must meet the eligibility requirements set forth in § 61.195.

American Eurocopter and HAI noted civilian NVG operations differ greatly from military NVG operations and recommended the FAA account for this when prescribing NVG operations and certification requirements. American Eurocopter and HAI further recommended reducing the flight instructor experience qualifications for giving NVG PIC qualification and currency training from 100 operations to 60 operations and requiring that instructors have NVG experience within the preceding five years (using ANVIS 6 GEN III or above equipment). They recommended such experience be in the category, class, and, if applicable, type of aircraft in question. AOPA supported the general concept of defining and addressing night vision goggle operations, while deferring to NVG users regarding specific details of the proposed provisions.

The specific missions of military pilots using NVGs may be different than civilian pilots, but there is no difference in prescribing training, qualifications, and recurrency for using NVGs. We disagree that we should take in account the requirements for NVG operations and certification between civilian pilots and flight instructors using NVGs versus military pilots and instructor pilots. In establishing these training, qualifications, and recurrency requirements for using NVGs, we consulted with our civilian stakeholders. For these reasons, the FAA is adopting the revision as proposed in the NPRM.

76. This revision of § 61.215(b) allows only a ground instructor with an instrument rating to give ground training for the issuance of an instrument rating and instrument proficiency check and for a recommendation for the knowledge test required for an instrument rating

This final rule revises § 61.215(b) to provide that only a certified ground instructor with an instrument rating may give ground training for the issuance of an instrument rating and instrument proficiency check and for a recommendation for the knowledge test required for an instrument rating. Under the old § 61.215(b), the rule erroneously permitted a ground instructor who held only an advanced ground instructor (AGI) certificate to give instrument training. The aeronautical knowledge subject areas for the AGI certificate do not cover instrument subjects on the knowledge test. Only the aeronautical knowledge subject areas for the instrument ground instructor (IGI) certificate cover instrument subjects. Authorizing instrument privileges to a holder of only an AGI certificate is not appropriate.

Seven commenters supported the proposed requirement that an AGI have an instrument rating to give ground

instruction toward an instrument rating or check ride. As the purpose for the rule change is correcting a mistake in the former rule and no substantive change is being made to the rule we are adopting the rule as proposed in the NPRM.

77. This revision of § 61.217(a) clarifies the recent experience requirements for ground instructors

This final rule revises § 61.217(a) to clarify the recent experience requirements for ground instructors, particularly the meaning of the phrase ''served for at least three months as a ground instructor.'' This revision will delete this phrase and establish more general criteria for recent experience requirements. The intent is to recognize a person's employment or activity as a ground instructor without that person being expected to maintain some kind of a time sheet or log to show that he or she ''served for at least three months as a ground instructor.''

One commenter asserted the proposed currency requirements are unfair to ground instructors not teaching at a college, university or part 141 school. The commenter suggested ground instructors be permitted to maintain currency by undergoing the ground portion of a flight instructor refresher course (FIRC) within the previous year. Another commenter recommended any ground instructor who has added a rating to their ground instructor certificate within the previous twelve months be deemed current. One commenter supported the proposed clarifications, but suggested the currency period be twenty-four months, rather than twelve months, to coincide with the duration of flight instructor privileges. Two commenters agreed that clarification of ground instructor currency requirements is needed, but these commenters asserted the proposed provisions leave unanswered what amount of time employed, or actively instructing, within the previous twelve months is necessary. In response, they recommended requiring a minimum of thirty-five or forty hours of ground instruction in the previous twelve calendar months. The Greater St. Louis Flight Instructor Association proposed ground instructors be required to complete a FIRC to renew their privileges every two years. This will give ground instructors the same training that flight instructors receive from attending a FIRC.

We believe the changes made to the currency requirements for ground instructors are all-encompassing and allow ground instructors to maintain their currency. The currency requirements are not just for ground instructors who teach at a college, university, or a part 141 pilot school. Under § 61.217, a ground instructor may maintain currency by showing compliance with any of the four methods shown in the rule.

In regard to the question about what amount of time employed, or actively instructing, within the previous twelve months is necessary, we have not established any specific amount of time of employment or activity as a ground instructor giving pilot, flight instructor, or ground instructor training. Rather the time must be reasonable and documented. For example, a ground instructor can show some kind of documentation or evidence that he/she taught a ground school lesson at a FIRC and be able to show the starting and ending teaching dates during the preceding twelve calendar months.

As for the recommendation requiring a minimum of thirty-five hours to forty hours of ground instruction in the preceding twelve calendar months, that recommendation is outside the scope of this rulemaking project. We did not propose such a change in the NPRM and we cannot adopt the recommendation in this final rule.

Likewise, the comment from the Greater St. Louis Flight Instructor Association requiring ground instructors attend a FIRC every two years is also outside the scope of this rulemaking project. For the above reasons, we are adopting the changes as proposed in the NPRM.

78. This revision of § 91.205(h) establishes the night vision goggle instrument and equipment requirements for night vision goggle operations

This final rule adds a new paragraph (h) in § 91.205 that establishes the required NVG instruments and equipment for NVG operations. This new paragraph (h) is similar to how the FAA requires certain instruments and equipment for VFR (day), VFR (night), and IFR operations under existing § 91.205. This new paragraph (h) establishes the instruments and equipment required to be installed in the aircraft that are required to be functioning in a normal manner, and that must be approved for use by the FAA.

One commenter noted most NVG approved cockpit lighting supplemental type certificates (STC) require installation of a radar altimeter and recommended requiring the use of a radar altimeter only in an environment where such use would enhance safety of flight, such as extended over water operations or low contrast areas such as desert or snow. AOPA supported the general concept of defining and addressing NVG operations, while deferring to NVG users regarding specific operational details.

In response to the recommendation about providing an exception from the aircraft's STC that requires installation of a radar altimeter, we have reviewed our STC approval process for required NVG equipment and our policy established in FAA Order 8900.1, Volume 4, Chapter 7, Section 4, paragraph 4–1128 B. 3. We agree that we should have required a radar altimeter in the listing of equipment required for NVG operations. Therefore, we have further revised § 91.205(h) by including a radar altimeter in the listing of required equipment for aircraft used in NVG operations. We do not consider this addition as a change from our proposal in the NPRM, because a radar altimeter is a required item of equipment in order to receive STC approval of an aircraft for NVG operations.

79. This revision of § 141.5 clarifies that the number of ''counters'' for a pilot school or provisional pilot school to qualify for the 80 percent or higher pass rate must be 10 different people

This final rule revises § 141.5 clarifying the definition of ''a quality of training pass rate of at least 80 percent.'' The purpose of this change is to establish that the number of ''counters'' for meeting the required 80 percent or higher school pass rate of requiring 10 different graduates, meaning 10 different people. A graduate can only be counted once in computing the 80 percent pass rate on the first attempt. American Flyers asserted a minimum 80% pass rate seems high, especially when a 90% pass rate raises suspicions of a conflict of interest. American Flyers suggested a 70% pass rate would be more realistic and consistent with other acceptable performance standards. Six commenters opposed the proposed requirement that the pass rate used to certify part 141 schools use data from 10 different individuals, claiming the requirement discriminates against smaller schools, and stated the same student completing different courses provides just as effective an evaluation as different people completing the courses. Three commenters raised concerns regarding the adequacy of training that can be met by requiring the 10 tests used to determine pass rate be practical tests. These commenters stated this requirement would introduce an element of independence to the testing.

One commenter requested clarification on what course graduations

are used to determine a school's pass rate, understanding that the total of all courses taken by all students is used to calculate the pass rate.

The wording of the old § 141.5 raised interpretation questions about how many graduates had to graduate for a school to meet the 80 percent or higher pass rate. Some posed scenarios where one person could be counted as all 10 graduates. The FAA disagreed and has amended § 141.5 to clarify that the 10 graduates must be 10 different people. The FAA believes that requiring the pass rate to be calculated from 10 different graduates is a better measure of the school's quality of training and provides a more realistic view of the school's pass rate.

In response to the commenter's request for clarification on what course graduations are used to determine a pilot school's pass rate, all approved courses may be considered. For example, a part 141 pilot school has courses approved for: Private Pilot Course for the Airplane Single Engine Land; Instrument Rating Course for the Airplane Single Engine Land; Commercial Pilot Course for the Airplane Single Engine; Commercial Pilot Course for the Airplane Multiengine; Flight Instructor Course for the Airplane Single Engine; Flight Instructor Course for the Airplane Multiengine; and Flight Instructor Instrument Course for the Airplane Single Engine. The 10 students can come from any of those 7 approved courses or just from one of the approved courses. However, as required § 141.5(e), the part 141 pilot school must have graduated at least 10 different students.

The requirement in § 141.5(d) that ''at least 80 percent of those persons passed their tests on the first attempt'' is not a change from the existing rule. The purpose of this change is clarifying the intent of the rule. Therefore, the FAA is adopting the revision as proposed in the NPRM.

80. This revision of § 141.9 clarifies the intent and meaning of examining authority

The FAA has found it necessary to revise the language under § 141.9 because some have misunderstood the rule and believe that when the FAA issues examining authority to a pilot school, it also authorizes examining authority for all the training courses of that school. This is not true.

One commenter recommended eliminating the granting of examining authority to flight schools because of the amount of trouble it has caused.

The FAA provides examining authority on a course-by-course basis. This means that if the pilot school makes specific application for a course, the FAA will issue examining authority as long as it meets the qualification requirements of § 141.63 for that specific course of training. Furthermore, the FAA only issues examining authority to a pilot school that meets the requirements of subpart D of part 141, as opposed to a provisional pilot school. Under § 141.63, a provisional pilot school is not qualified to receive examining authority.

81. This revision of § 141.33(d)(2) reduces the number of student enrollments to qualify for a check instructor position

This final rule revises § 141.33(d)(2) to reduce the number of student enrollments from 50 students to 10 students in a part 141 pilot school to qualify for check instructor positions. This revision demonstrates we are responding positively to recommendations from the pilot school industry to authorize the use of check instructors in some of the smaller pilot schools.

Three commenters argued there should be no minimum number of students for a flight school to be eligible to use check instructors, and recommended each requested case-by-case evaluation be made by the school's jurisdictional Flight Standards District Office (FSDO).

The FAA initially established the figure of 50 student enrollments when it promulgated § 141.33(d)(2) to provide for those flight schools that train large numbers of students. (*See* 62 FR 16350; April 4, 1997.) The position of check instructor was established because the FAA understands it is nearly impossible to expect chief instructors and assistant chief instructors to perform all the required stage checks, end-of-course tests, and instructor proficiency checks in large pilot schools. However, since the adoption of § 141.33(d)(2), a number of moderate-sized flight schools have informed the FAA that they have sufficient student activity to justify check instructors. For example, one chief instructor commented that his/her school has 15 student enrollments and each student requires six stage checks and one end-of-course test. Thus, he/she is required to perform 105 tests on his school's 15 student enrollments. Another chief instructor commented that he has 15 stage and end-of-course tests per student in his part 141 approved course. This computes to a total of 300 tests he/she must perform.

The FAA has made it clear that it does not expect the chief and assistant chief instructors to delegate all their duties and responsibilities to the check instructors (*See* 62 FR 16350; April 4, 1997). The FAA encourages and expects chief and assistant chief instructors to continue to have direct experience monitoring the quality of instruction and student performance in their schools. The FAA expects the school's chief and assistant chief instructors to continue checking their instructors' quality of training and their students' performance. However, the FAA also recognizes that this can be done by sampling instructor proficiency and student performance. The FAA does not believe it is necessary to establish a regulatory requirement on the numbers of stage checks, end-of-course tests, and instructor proficiency checks that each chief instructor or assistant chief instructor must perform. That decision may be left to the school's management.

When the FAA initially considered this change to the eligibility requirements for qualifying for a check instructor position, we consulted with several pilot schools and the National Air Transport Association. This final rule has reduced the number of student enrollments to qualify for the creation of a check instructor position to ten students. A minimum of 10 student enrollments will allow for check instructor positions to be designated for the medium-sized and the smaller pilot schools. Even though check instructors will probably conduct most of the phase and final checks, this does not alleviate chief and assistant chief instructors from performing their duties and responsibilities to ''spot check'' a sampling of their students during the phase and final checks. The reason for reducing the eligibility requirements for qualifying for a check instructor position from 50 students down to 10 students was that we wanted to be fair and reasonable with the smaller pilot schools. In adopting this change to § 141.33(d)(3), we consider this number to be fair and reasonable.

82. This revision of § 141.39(b) provides for the use of foreign registered aircraft to be used by part 141 training facilities that are located outside of the United States

This final rule revises § 141.39(b) to allow the use of foreign registered aircraft for part 141 training facilities that are located outside of the U.S. and conduct training outside of the U.S.

Under Amendment No. 141–11 (63 FR 53532; October 5, 1998), the FAA allowed part 141 schools to establish training facilities outside the United

States. Pilot schools either transport U.S. registered aircraft to those foreign countries or are allowed to use foreign-registered aircraft in their part 141 pilot schools. Section 141.39 has been revised to accommodate those part 141 schools who want to establish training facilities outside the United States.

Under the old § 141.39, the rule was worded in such a way that only allowed a pilot school's maintenance and inspection standards to be maintained under part 91, subpart E. In this revised § 141.39, the rule allows for the use of foreign-registered aircraft and foreign maintenance and inspection standards established by a foreign aviation authority in pilot schools located outside of the United States when the training is conducted outside the United States.

83. This revision deletes § 141.53(c)(1) because the requirement is no longer needed

This final rule deletes the provision under § 141.53(c)(1) that a training course submitted for approval prior to August 4, 1997, if approved, retains approval until 1 year after August 4, 1997. The requirement is no longer needed because all courses under part 141 had to receive their re-approval as of August 4, 1998. The provision is now obsolete.

84. This revision of § 141.55(e)(2)(ii) clarifies the requirement for approval of a training course

For clarification purposes, this final rule has changed the phrase ''the practical or knowledge test, or any combination thereof'' under § 141.55(e)(2)(ii) to read ''the practical or knowledge test, as appropriate.'' When a pilot school requests final approval for a knowledge training course, at least 80 percent of their students must have passed the knowledge test on the first attempt (knowledge test means ''a test on the aeronautical knowledge areas required for an airman certificate or rating that can be administered in written form or by a computer''). When a pilot school requests final approval for a flight training course, at least 80 percent of their students must have passed the practical test on the first attempt (practical test means ''a test on the areas of operations for an airman certificate, rating, or authorization that is conducted by having the applicant respond to questions and demonstrate maneuvers in flight, in a flight simulator, or in a flight training device''). The current language is confusing and the testing requirements have been misapplied.

85. This revision of § 141.77(c) clarifies the requirements for crediting previous training when transferring to a part 141 pilot school

This final rule clarifies § 141.77(c) relating to crediting previous training based on a proficiency test or a knowledge test. Under the old § 141.77(c), the regulation provided that for students who transfer to a part 141 pilot school, credit for previous training must be based on ''a proficiency test or knowledge test, or both.'' This language has generated questions about whether it is possible to credit previous flight training strictly on the basis of knowledge test results. The answer is no. The FAA never intended to allow a transfer student to be awarded flight training credit purely on the basis of completing a knowledge test. Nor did the FAA intend to allow a transfer student to be awarded ground training credit on the basis of completing a proficiency test.

A student who transfers to a part 141 pilot school and requests credit for previous flight training must complete a proficiency test that is given by the receiving pilot school's chief instructor or delegated check instructor. A student who transfers to a part 141 pilot school and requests credit for previous ground training must complete a knowledge test that is given by the receiving pilot school's chief instructor or delegated check instructor.

86. This revision of § 141.85(a)(1) and (d) further clarifies what tasks a chief instructor may delegate

This final rule revises § 141.85(a)(1) and (d) to clarify that the chief instructor may delegate the tasks of certification of a student's training record, graduation certificate, stage check, end-of-course test report, and recommendation for course completion to an assistant chief instructor or recommending instructor. The reason for this revision is to allow pilot schools to make better use of chief instructors' time and management responsibilities.

87. This revision of part 141, appendix B, paragraph 2 amends the eligibility requirement for enrollment in the flight portion of a private pilot certification course

This final rule revises part 141, appendix B, paragraph 2 to require a student to hold at least a recreational or student pilot certificate before enrolling in the flight portion of the private pilot certification course. This means that a student must complete his or her medical licensing before beginning flight training. Many pilot schools have voiced support for re-wording the rule to: (1) Affect their ability to credit orientation flights towards overall training requirements of its students (it is common practice when a person inquires about flight training to provide that person a local orientation flight); and (2) extend the time for a flight physical for students attending a pilot school in a remote area (since it may take a week or two to get an appointment).

Three commenters recommended that, in addition to student and recreational pilot certificates, students holding a sport pilot certificate should be permitted to enter into the solo phase of the program.

The FAA considered these recommendations in drafting this change to part 141, appendix B, paragraph 2, to require a person to hold a recreational, sport, or student pilot certificate in order to begin the solo phase of the private pilot certification course. This revision to part 141, appendix B, paragraph 2, which states, in pertinent part, ''prior to enrollment in the solo flight phase of the private pilot certification course.'' Prior to commencing the solo flight phase of his/her training, a student pilot would not be required to hold any kind of pilot certificate (*e.g.*, recreational, sport, or student pilot certificate) when receiving flight training with a flight instructor aboard. Therefore, student pilots will be required to hold a recreational, sport, or student pilot certificate only when they begin the solo phase of their training course.

The FAA agrees with the commenters' recommendation and has further revised part 141, appendix B, paragraph 2 to include the sport pilot certificate.

88. This revision of part 141, appendix B, 4(b)(1)(iii), 4(b)(2)(iii), and 4(b)(5)(iii) conforms the instrument training in the other private pilot courses to instrument training for private pilot certification for the airplane and powered-lift ratings

This final rule revises part 141, appendix B, 4(b)(1)(iii), 4(b)(2)(iii), and 4(b)(5)(iii) of the private pilot certification courses for the airplane single-engine, airplane multiengine, and powered-lift ratings, to mirror the requirements for private pilot certification for the single engine airplane, multiengine airplane, or powered-lift ratings under existing § 61.109.

Two commenters opposed the proposed requirement of 3 hours of instrument instruction in an aircraft asserting flight simulators, flight training devices, and aviation training devices offer equal, if not superior value

in providing instrument training. These commenters add this is especially true in the structured, standardized environment of a part 141 program. One commenter recommended permitting the use of such devices for all instrument training toward a private pilot certificate. One commenter recommended permitting the use of such devices for up to half of the required instrument training. One commenter recommended instructors providing instrument instruction in connection with private pilot certification be required to hold instrument ratings on their instructor certificates. The essence of our change is to further clarify the intent of the rule and no substantive changes have been made. Therefore, we are adopting the revision as proposed in the NPRM.

89. This revision of part 141, appendix B, paragraph 5(a)(1) conforms the solo cross country mileage requirement in a private pilot-airplane single engine rating course to the definition of ''cross country''

This final rule revises the solo cross country distance requirement in part 141, appendix B, paragraph 5(a)(1) for the private pilot certification-airplane single engine rating course from requiring a flight of ''at least 50 nautical miles'' to ''more than 50 nautical miles.'' This revision is to conform the distance requirement under this provision to the definition of ''cross country'' under § 61.1(b)(3)(ii).

Five commenters objected to the change. One commenter asserted no compelling safety or other concerns exist to mandate the change. Two commenters recommended that rather than changing § 61.109(a)(5)(ii), (b)(5)(ii), and (e)(5)(ii), the FAA change § 61.1(b)(3)(ii) to read ''at least'' for continuity purposes.'' One commenter recommended that, if the definition of cross country flight is to be changed to a format of ''more than'' a number of miles, then mileages should be reduced by one mile (that is, change the definition from at least fifty miles to more than forty-nine miles).

We have previously responded to these kinds of comments in the preamble section of this rulemaking document where we discussed this same change to § 61.109(a). The FAA is adopting the revision as proposed in the NPRM.

90. This revision of part 141, appendix B, paragraph 5(b)(1) conforms the solo cross country mileage requirement in an approved private pilot-airplane multiengine rating course to the definition of ''cross country''

This final rule revises the solo cross country distance requirement in part 141, appendix B, paragraph 5(b)(1) for the private pilot certification-airplane multiengine rating course from requiring a flight of ''at least 50 nautical miles'' to ''more than 50 nautical miles.'' The purpose of this revision is to conform the distance requirement under this provision to the definition of ''cross country'' under § 61.1(b)(3)(ii).

Four commenters objected to the change. Two commenters recommended that rather than changing § 61.109(a)(5)(ii), (b)(5)(ii), and (e)(5)(ii), the FAA change § 61.1(b)(3)(ii) to read ''at least'' for continuity purposes. One commenter recommended that, if the definition of cross country flight is to be changed to a format of ''more than'' a number of miles, then mileages should be reduced by one mile (that is, change the definition from at least fifty miles to more than forty-nine miles).

We have previously responded to these kinds of comments in the preamble section of this rulemaking document where we discussed this same change to § 61.109(b). The FAA is adopting the revision as proposed in the NPRM.

91. This revision of part 141, appendix B, paragraph 5(c)(1) conforms the solo cross country mileage requirement in an approved private pilot-helicopter rating course to ICAO requirements and the definition of ''cross country''

This final rule revises part 141, appendix B, paragraph 5(c)(1), changing the solo cross country distance requirement for the private pilot certification-helicopter rating course from ''at least 75 nautical miles total distance'' to ''at least 100 nautical miles total distance.'' The revision conforms to the ICAO requirements for the cross country distance, as set forth in ICAO Annex I, paragraph 2.7.1.3.2, which states that the total distance for a cross country flight be at least 100 nautical miles. This final rule also revises the solo cross country flight requirement in part 141, appendix B, paragraph 5(c)(1) for the private pilot certification-helicopter rating course from ''at least 25 nautical miles'' to ''more than 25 nautical miles.'' The purpose of this revision is also to conform to the distance requirement in § 61.1(b)(3)(v).

Four commenters objected to the change. We previously responded to similar comments in the preamble section of this rulemaking document where we discussed this same change to § 61.109(c). The FAA is adopting the revision as it was proposed in the NPRM.

92. This revision of part 141, appendix B, paragraph 5(d)(1) conforms the solo cross country mileage requirement in an approved private pilot-gyroplane rating course to the definition of ''cross country''

This final rule revises part 141, appendix B, paragraph 5(d)(1), changing the solo cross country distance requirement for the private pilot certification-gyroplane rating course from ''at least 75 nautical miles total distance'' to ''at least 100 nautical miles total distance.'' The purpose of this revision is to conform to the ICAO requirements for cross country distance, as set forth in ICAO Annex I, paragraph 2.7.1.3.2, which states that the total distance for a cross country flight be at least 100 nautical miles. This final rule revises the solo cross country flight requirement in paragraph 5(d)(1) of appendix B to part 141 for the private pilot certification-gyroplane rating course from ''at least 25 nautical miles'' to ''more than 25 nautical miles.'' The purpose of this revision is also to conform the distance requirement definition of ''cross country'' under § 61.1(b)(3)(v).

Three commenters objected to the change. We have previously responded to similar comments in the preamble section of the same change to § 61.109(d). The FAA is adopting the revision as proposed in the NPRM.

93. This revision of part 141, appendix B, paragraph 5(e)(1) conforms the solo cross country mileage requirement in an approved private pilot-powered-lift rating course to the definition of ''cross country''

This final rule revises the solo cross country distance requirement in part 141, appendix B, paragraph 5(e)(1) for the private pilot certification-powered-lift rating course from ''at least 50 nautical miles'' to ''more than 50 nautical miles.'' The purpose of this revision is to conform the distance requirement under this provision to definition of ''cross country'' under § 61.1(b)(3)(ii).

Two commenters supported the change in the definition of cross country flight from ''at least 50 nautical miles'' to ''more than 50 nautical miles''. We have previously responded to similar comments in discussion of changes to § 61.109(e). The FAA is adopting the revision as proposed in the NPRM.

94. This revision of part 141, appendix C, paragraph 4(b)(5) and (6) allows instrument training to be performed in an aviation training device (ATD)

This final rule revises part 141, appendix C, paragraph 4(b) by adding a paragraph (5). This change will allow 10 percent of the instrument training for the instrument rating course to be performed in an ATD. Under this revision, the instrument training that will be performed in an aviation training device will be given by the holder of a ground instructor certificate with an instrument rating or by a holder of a flight instructor certificate with an instrument rating appropriate to the instrument rating sought. The instrument training given in an aviation training device will contribute to the maximum 50 percent of the instrument training permitted to be performed in a flight simulator or a flight training device in accordance with existing part 141, appendix C, paragraph 4(c). For an ATD to be used for instrument training under paragraph 4(d), it will have to be approved by the FAA. The instrument training in an ATD will have to be provided by an authorized instructor. For a person to receive the maximum 10 percent credit in an ATD, the person could not have logged more than 40 percent of the required instrument training course hours in a flight simulator or flight training device. A view-limiting device (*e.g.*, a hood device or fogged glasses) will have to be worn by the applicant when logging instrument training in the aviation training device.

ALPA questioned the value of personal computer aviation training devices (PCATDs, also called ATDs) in developing the full skill set necessary for instrument competency. American Eurocopter and HAI recommended requirements for use of PCATDs include a requirement that they be used in areas free of audible distraction, or that headsets be used.

Four commenters opposed the provision limiting the use of PCATDs to 10% of the required instrument training. One commenter noted use of PCATDs can improve the quality of instrument training. One commenter stated the value of use of PCATDs is enhanced when they are used in a structured part 141 training program. Four commenters stated that, under part 61, PCATDs may be used for up to 10 hours of training toward an instrument rating, which equates to 25% of the minimum of 40 hours of training required under part 61.

The University of Oklahoma Aviation Department noted that a 10% limitation is inconsistent with language in the preamble limiting use of PCATDs to 50% of the training in a flight simulator or flight training device. The university recommended the FAA refer to percentages of instrument training hour requirements, as opposed to total flight hour training requirements. This commenter stated the reason for this is because the entirety of flight training hours in an instrument rating course may not be instrument training hours.

We are not permitting aviation training devices to be used entirely for the required training; only 10 percent of the total hours of instrument training in an instrument rating course may be performed in an aviation training device. We believe the use of ATD in performing at least 10 percent of the total hours of instrument training in an instrument rating course has been proven to show positive results and has been beneficial in teaching instrument procedures. However, to consider further expansion of the use of the aviation training devices, we do not have sufficient data at this time to make this change. We believe that performing the training in an area free of audible distractions makes for a good and professional training environment and a rule dictating this fact is not required.

Previously, we have only allowed ATDs to be used for a maximum of 10 hours in instrument training. We do allow a maximum combined usage between flight simulators and flight training devices, and now aviation training devices, to be used for a maximum combined usage of 50 percent of the required training time in an instrument rating course.

In part 141, appendix C, paragraph 4(b)(4), the combined maximum usage of flight simulators and flight training devices, and now ATDs, is 50 percent toward the total hours of instrument training course. For example, if an instrument training course requires thirty hours of training, only a total of fifteen hours may be performed in a combined usage of a flight simulator, flight training device, and aviation training device. A flight simulator may only be used for a maximum of fifteen hours (50 percent is the maximum usage for a flight simulator). A flight training device may only be used for a maximum of twelve hours (40 percent is the maximum usage for a flight training device). An aviation training device may only be used for a maximum of three hours (10 percent is the maximum usage for an aviation training device). In counting the hours of maximum allowed usage, a flight simulator, flight training device, and aviation training device (15 hours + 12 hours + 3 hours) equates to thirty hours. However, the combined usage of the flight simulator, flight training device, and aviation training device is limited to 50 percent of the total training hours, so only fifteen hours of the training may be performed in a flight simulator, flight training device, and aviation training device. If the training course is authorized to perform three hours in an aviation training device, then the remaining twelve hours may be performed in either a flight simulator or flight training device or a combination of both.

The FAA is adopting the revision as proposed in the NPRM.

95. This revision of part 141, appendix D, paragraph 5 allows the solo training requirements for the approved commercial pilot certification courses to be performed solo or with an instructor on board

This final rule revises part 141, appendix D, paragraph 5 for a commercial pilot certification course to be performed either solo or with a flight instructor on board. The purpose of this revision is to conform part 141, appendix D, paragraph 5 with revised §§ 61.129(a)(4), (c)(4), (d)(4), and (e)(4) for the single engine airplane, helicopter, gyroplane, and powered-lift ratings at the commercial pilot certification level.

Five commenters opposed the provision. Two commenters asserted solo flight contributes to the development of essential self-reliance, decisionmaking, and command skills. Three commenters stated that under the proposed rules, a pilot could progress to advanced certification with only ten hours of solo flight early in training. Two commenters asserted no safety of flight data supports the proposed provision. One commenter recommended a solo flight requirement be retained, but that pilots be permitted to obtain solo flight experience toward a multiengine airplane rating in a single engine airplane to avoid potential conflicts with insurance restrictions.

We have previously responded to these kinds of comments in the preamble section of this rulemaking document where we discussed this same change to § 61.129(a)(4), (c)(4), (d)(4), (e)(4), and (g)(2).

One commenter stated insurance concerns should not restrict solo flight by commercial pilot candidates. This commenter stated most commercial pilot training is performed in single engine fixed gear airplanes and some low performance single engine retractable gear airplanes, which are not difficult to insure. Another commenter asserted that insurance policy

restrictions on the use of multiengine airplanes may present difficulties for private pilot applicants from flying solo.

The Greater St. Louis Flight Instructor Association rejected the argument that flights with an instructor on board foster cockpit resource management (CRM) skills, noting that the purpose of part 61 training is to prepare pilots to fly to single-pilot standards, not to prepare them for a future airline career. The association also argued the proposed provision subverts the intent of § 91.3 which defines the PIC as directly responsible for, and the final authority on, the operation of the aircraft. Finally, the association asserted students ostensibly acting as PIC will defer to flight instructors and examiners.

The FAA acknowledges the comments received about this proposal. We have previously responded to these kinds of comments in the preamble section of this rulemaking document where we discussed this same change to § 61.129(a)(4), (c)(4), (d)(4), (e)(4), and (g)(2).

96. This revision of part 141, appendix D, paragraph 4 allows the cross country training flights for the approved commercial pilot certification courses to be performed under VFR or IFR

This final rule revises part 141, appendix D, paragraph 4 to allow cross country training flights in the commercial pilot certification courses to be performed under VFR or IFR. This revision responds positively to recommended changes to part 141 from some pilot schools.

From the time that the cross country training requirements under part 141, appendix D, paragraph 4 were promulgated, the FAA has received recommendations from several pilot schools and companies that prepare training courses to amend the requirements to allow cross country flights to be performed under IFR. The basis for their recommendation is that most commercial pilot training applicants for airplane ratings and some for helicopter ratings are concurrently enrolled in an instrument rating course. The FAA agrees that it makes sense to allow these cross country training requirements to be performed under IFR or VFR. This final rule revises the requirements for the daytime cross country training flight (*See* paragraphs (b)(1)(iii), (b)(2)(iii), (b)(3)(ii), (b)(4)(ii), (b)(5)(ii), (b)(7)(ii)) to read ''One cross country flight during daytime conditions.'' This change will permit the daytime cross country training flight to be performed under IFR or VFR.

Two commenters opposed the proposed provision. The commenters stated the visual navigation skills required for VFR cross country flight should not be deemphasized. One commenter stated commercial pilot-helicopter candidates should be required to perform cross country flights under VFR because helicopters typically operate under VFR.

This final rule provides that the nighttime cross country training flight requirements (*See* paragraphs (b)(1)(iv), (b)(2)(iv), (b)(3)(iii), (b)(5)(iii), and (b)(7)(iii)) in the commercial pilot certification courses to read ''One cross country flight during nighttime conditions.'' This revision will permit the nighttime cross country training flight to be performed under IFR or under VFR.

We have previously responded to these kinds of comments in the preamble section of this rulemaking document where we discussed this same change to § 61.129(a)(3)(iii) and (iv), (b)(3)(iii) and (iv), (c)(3)(iii) and (iv), (d)(2)(ii), (e)(3)(ii) and (iii), and (g)(3)(ii) and (iii). The FAA is adopting the revision as it was proposed in the NPRM.

Flights in helicopters are mostly flown VFR; however, some helicopters now have modern instruments and navigation equipment installed and are able to be flown IFR. The rule does not require the flights to be flown IFR or VFR, it leaves it to the discretion of the instructor and the student's needs.

97. This revision of part 141, appendix D, paragraph 4(b)(4)(iii) deletes the cross country training at nighttime requirement for the commercial pilot certification course for the gyroplane rating

This final rule deletes the cross country training at nighttime requirement in part 141, appendix D, paragraph 4(b)(4)(iii) for the commercial pilot certification course for the gyroplane rating. The FAA determined that nighttime training for the gyroplane rating for the commercial pilot certification course will be more useful and more safely conducted near an airport, because gyroplanes have very limited equipment and systems for nighttime cross country operations.

Two commenters objected to the elimination of the nighttime cross country requirement for a commercial gyroplane certification. The commenters asserted if commercial gyrocopter pilots are permitted to carry passengers at night, their training should reflect it. The commenters also stated that if gyroplanes are not equipped to conduct nighttime cross country operations, then the FAA should revisit equipment requirements rather than reduce training requirements.

We have previously responded to this kind of comment in the preamble section of this rulemaking document where we discussed this same change to § 61.129(d)(3)(iii). The FAA is adopting the revision as proposed in the NPRM.

98. This revision of part 141, appendix D, paragraph 4(d)(4)(vi) requires ground reference maneuvers as an area of operation for the gyroplane rating in the commercial pilot certificate course

This final rule revises part 141, appendix D, paragraph 4(d)(4)(vi) requiring ground reference maneuvers as an area of operation for the gyroplane rating in the commercial pilot certificate course. This will conform part 141, appendix D, paragraph 4(d)(4)(vi) with revised § 61.127(b)(4)(vi) requiring flight proficiency in ''ground reference maneuvers'' for the gyroplane rating in the commercial pilot certificate course. The ground reference maneuvers must include at least ''eights around a pylon,'' ''eights along a road,'' ''rectangular course,'' ''S-turns,'' and ''turns around a point.''

99. This revision of part 141, appendix D, paragraph 4(b)(1)(ii) allows the complex airplane training for the approved commercial pilot certification course-airplane single engine rating to be performed in either a single or multiengine complex airplane

This final rule revises the complex airplane training requirement for the commercial pilot certification course for the single engine airplane rating under part 141, appendix D, paragraph 4(b)(1)(ii). This revision is in response to the AOPA's petition for rulemaking of February 11, 1999. This final rule will allow the commercial pilot certification course for the single engine airplane rating to be approved with use of either a complex single engine airplane or a complex multiengine airplane. The use of either a complex single engine airplane or a complex multiengine airplane to meet the single engine airplane training requirements is permitted under existing § 61.129(a)(3)(ii) for those training organizations that have chosen not to be approved under part 141. The FAA has determined that the current provision under part 141 may create an unfair financial burden on applicants at a part 141 pilot school versus those applicants who receive their training other than through a part 141 pilot school.

Therefore, this final rule deletes the word ''single-engine'' from paragraph 4(b)(1)(ii) of part 141, appendix D, so the rule will merely read as ''10 hours

of training in an airplane that has retractable landing gear, flaps, and a controllable pitch propeller, or is turbine-powered.''

Six commenters supported the proposed provisions permitting use of a complex multiengine airplane to satisfy the complex airplane experience requirement for a commercial single engine airplane rating. Two commenters recommended the provision be extended to part 61. Two commenters, including LeTourneau University, recommended pilots be permitted to train in both multiengine and single engine airplanes, and obtain both airplane single engine and airplane multiengine ratings by taking one just one practical test in a multiengine airplane.

Five commenters, including the Joint Commenters, recommended the development of alternatives to the complex airplane experience requirement. Two commenters recommended the proposed provisions permit use of FADEC-equipped airplanes instead of controllable-pitch propeller airplanes, as allowed under FAA Notice 8000.331. The Joint Commenters recommended eliminating the retractable gear requirement or reinstating provisions permitting experience in either a complex or a high-performance airplane. One commenter recommended the FAA modify aeronautical experience and practical test requirements for commercial pilot airplane ratings and flight instructor airplane ratings to permit use of Technically Advanced Aircraft (TAA) instead of complex airplanes. Five commenters recommended that the requirement that commercial pilots have complex airplane experience be eliminated. Four commenters noted few single engine airplanes produced today fall under the definition of complex airplanes, and asserted the requirement forces schools to maintain antiquated airplanes simply to meet the requirement. Three commenters stated authority to operate complex airplanes is adequately addressed by requiring an endorsement. One commenter asserted complex airplane experience is unnecessary for activities such as clear weather sightseeing flights and flight instruction. This commenter recommended an allowance for commercial pilot and flight instructor certificates without complex airplane experience.

The FAA acknowledges comments received on this proposal. This change already exists in § 61.129(a)(3)(ii) as the complex airplane training for the commercial pilot certificate for the single engine airplane rating does not specifically require the flight experience to be performed in a complex single engine airplane. The flight experience may be obtained in either a complex single engine airplane or complex multiengine airplane.

100. This revision of part 141, appendix D, paragraphs 4(b)(1)(i), (2)(i), (3)(i), (4)(i), (5)(i), and (7)(i) clarifies the instruction training for the commercial pilot certification courses for the airplane single-engine, airplane multiengine, helicopter, gyroplane, powered-lift, and airship ratings

This final rule revises part 141, appendix D, paragraphs 4(b)(1)(i), (2)(i), (3)(i), (4)(i), (5)(i), and (7)(i) to clarify that the tasks required for ''instrument training'' in the commercial pilot certification courses for the airplane single-engine, airplane multiengine, rotorcraft helicopter, rotorcraft gyroplane, powered-lift, and airship ratings require the use of a view-limiting device (*e.g.,* use of a hood device, fogged goggles, *etc.*). This revision is in response to inquiries about what tasks are required to satisfy ''instrument training'' for commercial pilot certification courses.

This revision will parallel the revised changes to instrument training under § 61.129 for the airplane single-engine, airplane multiengine, rotorcraft helicopter, rotorcraft gyroplane, powered-lift, and airship ratings at the commercial pilot certification level.

Three commenters objected to the increase in required instrument training from five hours to ten hours, and recommended the requirement of five hours be retained. Flight Safety International stated that, unlike part 61, part 141 commercial pilot candidates must have an instrument rating before completing the commercial pilot course; therefore an increase in the amount of instrument training required for a commercial pilot certificate is not necessary. Six commenters objected to the unqualified requirement that a view-limiting device be used for instrument training. The commenters asserted students should be permitted to train without a view-limiting device in actual IMC or when using a flight simulator, flight training device, or PCATD. Three commenters recommended the rule be modified to require training in actual IMC or using a view-limiting device.

There is an increase of instrument training from five hours to ten hours; however, five hours of instrument training in the aircraft remains at five hours in the aircraft, and the other five hours is permitted to be performed in a flight simulator, flight training device, or an aviation training device. We did not increase the total time of the commercial pilot certification course. We believe that most commercial pilot certificate applicants are concurrently enrolled in an instrument rating course, and we believe this revision of allowing this additional five hours of instrument training in the commercial pilot certification course will be beneficial to those applicants concurrently enrolled in an instrument rating course.

We have previously responded to these kinds of comments in the preamble section of this rulemaking document where we discussed this same change to § 61.57(c). The FAA is adopting the revision as proposed in the NPRM.

101. This revision of part 141, appendix E, paragraph 2 requires pilots enrolled in an ATP certification course to have met the ATP aeronautical experience requirements of part 61, subpart G prior to completion of the course

This final rule revises part 141, appendix E, paragraph 2 to establish that a person must first meet the aeronautical experience requirements under part 61, subpart G, for an ATP certificate before completing the flight portion of an ATP certification course. The purpose of this revision is to clarify that a person who completes the ATP certification course must also have met the appropriate ATP aeronautical experience of part 61, subpart G before applying for the ATP certificate.

The existing language in part 141, appendix E, paragraph 2 has been misinterpreted by some to mean that a person could apply for an ATP certificate after meeting only part 141, appendix E, paragraph 2.(a), (b), (c), or (d) of that part. This is not correct, because an applicant for an ATP certificate must also have met the appropriate aeronautical experience requirements under part 61, subpart G. The introductory language in part 141, appendix E, paragraph 2 clarifies that an applicant for an ATP certificate must also have met the appropriate aeronautical experience requirements under part 61, subpart G prior to completion of the flight portion of the airline transport pilot (ATP) certification course.

102. This revision of part 141, appendix I, paragraphs 3 and 4 clarifies the ground and flight training required for the approved additional category and/or class rating course

This final rule revises paragraphs 3 and 4 of appendix I to part 141 to clarify the ground and flight training required for the additional category and/or class rating course. This revision was

developed in response to confusion about what is the amount of ground and flight training required for an add-on aircraft category and/or class rating course.

The confusion arises because of the language of the former paragraphs 3 and 4 of part 141, appendix I which states that training must be in areas ''that are specific to that aircraft category and class rating and pilot certificate level for which the course applies.'' Many believed this language did not clearly state what the required ground and flight training amounts and content for ''add-on'' category/class courses were. This final rule expands the content of paragraphs 3 and 4 of part 141, appendix I for the additional category and/or class rating courses to specify the required amount of ground and flight training and their content for an add-on aircraft category and/or class rating course at the recreational pilot, private pilot, commercial pilot, and ATP certification levels. Revised paragraphs 3 and 4 establish the required amount of ground and flight training and their content for just an ''add-on'' class rating (*i.e.,* where the applicant already holds a rating in that aircraft category, and the course at issue is only for an added class rating within that aircraft category) at the various pilot certification levels.

One commenter generally agreed that reducing overall ground and flight time requirements under appendix I is an improvement but opposes some of the remaining requirements. Flight Safety International asserted the proposed revisions to appendix I do little to improve understanding and readability. Three commenters recommended eliminating the cross country flight requirements for adding a multiengine rating to a private or commercial certificate with a single engine rating, stating the skills required to fly cross country in a multiengine airplane do not differ significantly from those required to fly cross country in a single engine airplane. One commenter asserted any differences in these two areas could be adequately addressed in ground training.

Two commenters questioned the need for training in areas such as night flight, complex airplanes operations, or flight by reference to instruments when adding a multiengine airplane rating to a commercial certificate. These commenters stated pilots will already have experience in these areas. These commenters also asserted the hours required for cross country, instrument, and night flight training would be better spent practicing maneuvers or approaches, or multiengine specific topics, such as V_{MC} or engine-inoperative scenarios. Two commenters asserted the training requirements under part 141 are unnecessarily burdensome. Four commenters stated pilots have greater flexibility when seeking to add a class rating to an existing certificate under part 61 than they do under part 141.

Two commenters objected to the prescription of minimum training hour requirements when no such requirements exist under part 61. The commenters recommended the minimum training hour requirements under part 141 be eliminated or part 141 flight schools be granted discretion to deviate from specified requirements, similar to that granted under § 61.63(c). Alternatively, the University of Oklahoma Aviation Department recommended training at least as extensive and rigorous as the part 141 requirements be prescribed under part 61.

One commenter questioned the amount of training required to add a single engine airplane rating to a commercial certificate with a multiengine airplane rating. The commenter asserted that training in a single engine airplane is less complicated, and therefore transitioning from a multiengine airplane to a single engine airplane should require less training than transitioning from a single engine airplane to a multiengine airplane. The commenter stated that in some areas, such as a cross country flight or instrument flight, the flight should be able to be completed without the need for additional training. The commenter also argued fifteen hours of ground training is excessive for the transition from the multiengine airplane rating to the single engine airplane rating.

The FAA acknowledges the comment received on this proposal, and has determined that the nature of the comment does not require us to revise or withdraw this proposal. The essence of the change is merely to further clarify the intent of the rule and no substantive changes have been made. Therefore, the FAA is adopting the revision as it was proposed in the NPRM.

Regulatory Notices and Analyses

Paperwork Reduction Act

Information collection requirements associated with this final rule have been approved previously by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Numbers 2120–0009 and 0021.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. There is one revision in this final rule document (*See* Revision No. 71) where the FAA has amended § 61.159(d) and (e) to conform our ATP certification requirements to ICAO Standards and Recommended Practices.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this final rule: (1) Has benefits that justify its costs, (2) is not an ''economically significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary

obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

This final rule revises the training, qualification, certification, and operating requirements for pilots, flight instructors, ground instructors, and pilot schools. These changes are needed to clarify, update, and correct our existing regulations.

For the revisions that we were able to quantify the cost savings, we estimate this rule change to generate cost savings of $34.0 million ($23.8 million, discounted) and costs of $7.0 million ($5.3 million, discounted) over the 2009–2018 time period. Therefore, this final rule is estimated to generate net cost savings of $26.9 million ($18.5 million, discounted) over the same ten-year period and is cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory revisions and to explain the rationale for their actions to assure that such revisions are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The cost of the additional training for the night vision goggle rules is about $1,800 per pilot ($1,800 ≈ $1,167,138 (undiscounted cost of night vision goggle training in year 1) ÷ 650 (estimated population that will receive night vision goggle training in year 1)). Since the training is optional these small costs will not impose a burden on any small entity. Also, this revision could result in annual cost savings of about $625 per rotorcraft pilot and a cost savings of about $430 per general aviation pilot by allowing the use of alternate methods to maintain instrument currency. We do not consider these costs or cost-savings to be significant. Therefore, as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this revised rule and has determined that it will have only a domestic impact and therefore no affect on international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The level equivalent of $100 million in CY 1995, adjusted for inflation to CY 2007 levels by the Consumer Price Index for all Urban Consumers (CPI–U) as published by the Bureau of Labor Statistics, is $136.1 million. This revised rule does not contain such a mandate.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this final rulemaking action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore will not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this revised rulemaking action qualifies for the categorical exclusion identified in paragraph 307(k) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule in accordance with Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the Executive Order, because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

(1) You can get an electronic copy of this final rule through the Internet by: Searching the Department of Transportation's electronic Docket Management System (DMS) Web page at *http://dms.dot.gov/search;*

(2) Visiting the FAA's Regulations and Policies Web page at: *http://www.faa.gov/regulations_policies;* or

(3) Accessing the Government Printing Office's Web page at: *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy of this final rule by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this final rulemaking document.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or

the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Recreation and recreation areas, Reporting and recordkeeping requirements, Security measures, Teachers.

14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Ethiopia, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements, Yugoslavia.

14 CFR Part 141

Airmen, Educational facilities, Reporting and recordkeeping requirements, Schools.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 2. Amend § 61.1 by:
■ a. Revising paragraphs (b)(2)(i) and (ii);
■ b. Redesignating existing paragraphs (b)(12) through (16) as paragraphs (b)(14) through (18); and
■ c. Adding a new paragraphs (b)(12) and (13) to read as follows:

§ 61.1 Applicability and definitions.

* * * * *

(b) * * *

(2) * * *

(i) A person who holds a ground instructor certificate issued under part 61 of this chapter and is in compliance with § 61.217, when conducting ground training in accordance with the privileges and limitations of his or her ground instructor certificate;

(ii) A person who holds a flight instructor certificate issued under part 61 of this chapter and is in compliance with § 61.197, when conducting ground training or flight training in accordance with the privileges and limitations of his or her flight instructor certificate; or

* * * * *

(12) *Night vision goggles* means an appliance worn by a pilot that enhances the pilot's ability to maintain visual surface reference at night.

(13) *Night vision goggle operation* means the portion of a flight that occurs during the time period from 1 hour after sunset to 1 hour before sunrise where the pilot maintains visual surface reference using night vision goggles in an aircraft that is approved for such an operation.

* * * * *

■ 3. Add a new § 61.2 to read as follows:

§ 61.2. Exercise of Privilege

(a) *Validity.* No person may:

(1) Exercise privileges of a certificate, rating, endorsement, or authorization issued under this part if the certificate, rating or authorization is surrendered, suspended, revoked or expired.

(2) Exercise privileges of a flight instructor certificate if that flight instructor certificate is surrendered, suspended, revoked or expired.

(3) Exercise privileges of a foreign pilot certificate to operate an aircraft of foreign registry under § 61.3(b) if the certificate is surrendered, suspended, revoked or expired.

(4) Exercise privileges of a pilot certificate issued under § 61.75, or an authorization issued under § 61.77, if the foreign pilot certificate relied upon for the issuance of the U.S. pilot certificate or authorization is surrendered, suspended, revoked or expired.

(5) Exercise privileges of a medical certificate issued under part 67 to meet any requirements of part 61 if the medical certificate is surrendered, suspended, revoked or expired according to the duration standards set forth in § 61.23(d).

(6) Use an official government issued driver's license to meet any requirements of part 61 related to holding that driver's license, if the driver's license is surrendered, suspended, revoked or expired.

(b) *Currency.* No person may:

(1) Exercise privileges of an airman certificate, rating, endorsement, or authorization issued under this part unless that person meets the appropriate airman and medical recency requirements of this part, specific to the operation or activity.

(2) Exercise privileges of a foreign pilot license within the United States to conduct an operation described in § 61.3(b), unless that person meets the appropriate airman and medical recency requirements of the country that issued the license, specific to the operation.

■ 4. Amend § 61.3 by revising paragraphs (a) introductory text, (a)(1), (a)(2)(i), (b) introductory text, (b)(1), (c)(1), (c)(2)(ii), (c)(2)(iii), (c)(2)(v) introductory text, (c)(2)(xi), (c)(2)(xii), (f)(1)(i), (f)(2)(i), (f)(2)(ii), (g)(1)(i), (g)(2)(i), and (g)(2)(ii) to read as follows:

§ 61.3 Requirement for certificates, ratings, and authorizations.

(a) *Pilot certificate.* No person may serve as a required pilot flight crewmember of a civil aircraft of the United States, unless that person—

(1) Has a pilot certificate or special purpose pilot authorization issued under this part in that person's physical possession or readily accessible in the aircraft when exercising the privileges of that pilot certificate or authorization. However, when the aircraft is operated within a foreign country, a pilot license issued by that country may be used; and

(2) * * *

(i) Driver's license issued by a State, the District of Columbia, or territory or possession of the United States;

* * * * *

(b) *Required pilot certificate for operating a foreign-registered aircraft.* No person may serve as a required pilot flight crewmember of a civil aircraft of foreign registry within the United States, unless that person's pilot certificate—

(1) Is in that person's physical possession, or readily accessible in the aircraft when exercising the privileges of that pilot certificate; and

* * * * *

(c) * * *

(1) A person may serve as a required pilot flight crewmember of an aircraft only if that person holds the appropriate medical certificate issued under part 67 of this chapter, or other documentation acceptable to the FAA, that is in that person's physical possession or readily accessible in the aircraft. Paragraph (c)(2) of this section provides certain exceptions to the requirement to hold a medical certificate.

(2) * * *

(ii) Is exercising the privileges of a student pilot certificate while seeking a sport pilot certificate with other than glider or balloon privileges and holds a U.S. driver's license;

(iii) Is exercising the privileges of a student pilot certificate while seeking a pilot certificate with a weight-shift-control aircraft category rating or a powered parachute category rating and holds a U.S. driver's license;

* * * * *

(v) Is exercising the privileges of a sport pilot certificate with other than glider or balloon privileges and holds a U.S. driver's license. A person who has applied for or held a medical certificate may exercise the privileges of a sport pilot certificate using a U.S. driver's license only if that person—

* * * * *

(xi) Is operating an aircraft with a U.S. pilot certificate, issued on the basis of a foreign pilot license, issued under § 61.75, and holds a medical certificate issued by the foreign country that issued the foreign pilot license, which is in that person's physical possession or readily accessible in the aircraft when exercising the privileges of that airman certificate.

(xii) Is a pilot of the U.S. Armed Forces, has an up-to-date U.S. military medical examination, and holds military pilot flight status.

* * * * *

(f) * * *

(1) * * *

(i) Holds a Category II pilot authorization for that category or class of aircraft, and the type of aircraft, if applicable; or

* * * * *

(2) * * *

(i) Holds a pilot certificate with category and class ratings for that aircraft and an instrument rating for that category aircraft;

(ii) Holds an airline transport pilot certificate with category and class ratings for that aircraft; or

* * * * *

(g) * * *

(1) * * *

(i) Holds a Category III pilot authorization for that category or class of aircraft, and the type of aircraft, if applicable; or

* * * * *

(2) * * *

(i) Holds a pilot certificate with category and class ratings for that aircraft and an instrument rating for that category aircraft;

(ii) Holds an airline transport pilot certificate with category and class ratings for that aircraft; or

* * * * *

■ 5. Revise § 61.11 to read as follows:

§ 61.11 Expired pilot certificates and re-issuance.

(a) No person who holds an expired pilot certificate or rating may act as pilot in command or as a required pilot flight crewmember of an aircraft of the same category or class that is listed on that expired pilot certificate or rating.

(b) The following pilot certificates and ratings have expired and will not be reissued:

(1) An airline transport pilot certificate issued before May 1, 1949, or an airline transport pilot certificate that contains a horsepower limitation.

(2) A private or commercial pilot certificate issued before July 1, 1945.

(3) A pilot certificate with a lighter-than-air or free-balloon rating issued before July 1, 1945.

(c) An airline transport pilot certificate that was issued after April 30, 1949, and that bears an expiration date but does not contain a horsepower limitation, may have that airline transport pilot certificate re-issued without an expiration date.

(d) A private or commercial pilot certificate that was issued after June 30, 1945, and that bears an expiration date, may have that pilot certificate reissued without an expiration date.

(e) A pilot certificate with a lighter-than-air or free-balloon rating that was issued after June 30, 1945, and that bears an expiration date, may have that pilot certificate reissued without an expiration date.

■ 6. Amend § 61.19 by revising paragraphs (b), (d), and (e); removing paragraph (f); re-designating (g) as paragraph (f); revising newly re-designated paragraph (f); and re-designating paragraph (h) as (g) to read as follows:

§ 61.19 Duration of pilot and instructor certificates.

* * * * *

(b) *Student pilot certificate.*

(1) For student pilots who have not reached their 40th birthday, the student pilot certificate does not expire until 60 calendar months after the month of the date of examination shown on the medical certificate.

(2) For student pilots who have reached their 40th birthday, the student pilot certificate does not expire until 24 calendar months after the month of the date of examination shown on the medical certificate.

(3) For student pilots seeking a glider or balloon rating only, the student pilot certificate does not expire until 60 calendar months after the month of the date issued, regardless of the person's age.

* * * * *

(d) *Flight instructor certificate.* Except as specified in § 61.197(b), a flight instructor certificate expires 24 calendar months from the month in which it was issued, renewed, or reinstated, as appropriate.

(e) *Ground instructor certificate.* A ground instructor certificate is issued without a specific expiration date.

(f) *Return of certificates.* The holder of any airman certificate that is issued under this part, and that has been suspended or revoked, must return that certificate to the FAA when requested to do so by the Administrator.

* * * * *

■ 7. Amend § 61.23 by:

■ a. Revising paragraph (a)(3)(iv);

■ b. Redesignating paragraph (a)(3)(v) as (a)(3)(vi);

■ c. Adding new paragraphs (a)(3)(v) and (vii);

■ d. Revising newly re-designated paragraph (a)(3)(vi);

■ e. Revising paragraph (b) introductory text and paragraphs (b)(3), (b)(7), and (b)(8);

■ f. Adding a new paragraph (b)(9); and

■ g. Revising paragraph (c)(1) introductory text and (c)(2) introductory text.

The revisions and additions read as follows:

§ 61.23 Medical certificates: Requirement and duration.

(a) * * *

(3) * * *

(iv) When exercising the privileges of a flight instructor certificate and acting as the pilot in command;

(v) When exercising the privileges of a flight instructor certificate and serving as a required pilot flight crewmember;

(vi) When taking a practical test in an aircraft for a recreational pilot, private pilot, commercial pilot, or airline transport pilot certificate, or for a flight instructor certificate; or

(vii) When performing the duties as an Examiner in an aircraft when administering a practical test or proficiency check for an airman certificate, rating, or authorization.

(b) *Operations not requiring a medical certificate.* A person is not required to hold a medical certificate—

* * * * *

(3) When exercising the privileges of a pilot certificate with a glider category rating or balloon class rating in a glider or a balloon, as appropriate;

* * * * *

(7) When serving as an Examiner or check airman and administering a practical test or proficiency check for an airman certificate, rating, or authorization conducted in a glider, balloon, flight simulator, or flight training device;

(8) When taking a practical test or a proficiency check for a certificate, rating, authorization or operating privilege conducted in a glider, balloon, flight simulator, or flight training device; or

(9) When a military pilot of the U.S. Armed Forces can show evidence of an up-to-date medical examination

authorizing pilot flight status issued by the U.S. Armed Forces and—

(i) The flight does not require higher than a third-class medical certificate; and

(ii) The flight conducted is a domestic flight operation within U.S. airspace.

(c) * * *

(1) A person must hold and possess either a medical certificate issued under part 67 of this chapter or a U.S. driver's license when exercising the privileges of—

* * * * *

(2) A person using a U.S. driver's license to meet the requirements of this paragraph must—

* * * * *

■ 8. Amend § 61.25 by revising paragraph (a)(1) to read as follows:

§ 61.25 Change of name.

(a) * * *

(1) Airman certificate; and

* * * * *

■ 9. Amend § 61.29 by:

■ a. Removing paragraph (d)(3);

■ b. Redesignating existing paragraphs (d)(4) and (5) as paragraphs (d)(3) and (4); and

■ c. Revising newly re-designated paragraphs (d)(3) and (4) to read as follows:

§ 61.29 Replacement of a lost or destroyed airman or medical certificate or knowledge test report.

* * * * *

(d) * * *

(3) The certificate holder's date and place of birth; and

(4) Any information regarding the—

(i) Grade, number, and date of issuance of the airman certificate and ratings, if appropriate;

(ii) Class of medical certificate, the place and date of the medical exam, name of the Airman Medical Examiner (AME), and the circumstances concerning the loss of the original medical certificate, as appropriate; and

(iii) Date the knowledge test was taken, if appropriate.

* * * * *

■ 10. Amend § 61.31 by:

■ a. Revising paragraph (d)(1);

■ b. Removing paragraph (d)(2);

■ c. Redesignating paragraph (d)(3) as (d)(2) and revising newly re-designating (d)(2);

■ d. Redesignating existing paragraph (k) as (l); and

■ e. Adding new paragraph (k).

The revisions and addition read as follows:

§ 61.31 Type rating requirements, additional training, and authorization requirements.

* * * * *

(d) * * *

(1) Hold the appropriate category, class, and type rating (if a class or type rating is required) for the aircraft to be flown; or

(2) Have received training required by this part that is appropriate to the pilot certification level, aircraft category, class, and type rating (if a class or type rating is required) for the aircraft to be flown, and have received an endorsement for solo flight in that aircraft from an authorized instructor.

* * * * *

(k) *Additional training required for night vision goggle operations.* (1) Except as provided under paragraph (k)(3) of this section, a person may act as pilot in command of an aircraft using night vision goggles only if that person receives and logs ground training from an authorized instructor and obtains a logbook or training record endorsement from an authorized instructor who certifies the person completed the ground training. The ground training must include the following subjects:

(i) Applicable portions of this chapter that relate to night vision goggle limitations and flight operations;

(ii) Aeromedical factors related to the use of night vision goggles, including how to protect night vision, how the eyes adapt to night, self-imposed stresses that affect night vision, effects of lighting on night vision, cues used to estimate distance and depth perception at night, and visual illusions;

(iii) Normal, abnormal, and emergency operations of night vision goggle equipment;

(iv) Night vision goggle performance and scene interpretation; and

(v) Night vision goggle operation flight planning, including night terrain interpretation and factors affecting terrain interpretation.

(2) Except as provided under paragraph (k)(3) of this section, a person may act as pilot in command of an aircraft using night vision goggles only if that person receives and logs flight training from an authorized instructor and obtains a logbook or training record endorsement from an authorized instructor who found the person proficient in the use of night vision goggles. The flight training must include the following tasks:

(i) Preflight and use of internal and external aircraft lighting systems for night vision goggle operations;

(ii) Preflight preparation of night vision goggles for night vision goggle operations;

(iii) Proper piloting techniques when using night vision goggles during the takeoff, climb, enroute, descent, and landing phases of flight; and

(iv) Normal, abnormal, and emergency flight operations using night vision goggles.

(3) The requirements under paragraphs (k)(1) and (2) of this section do not apply if a person can document satisfactory completion of any of the following pilot proficiency checks using night vision goggles in an aircraft:

(i) A pilot proficiency check on night vision goggle operations conducted by the U.S. Armed Forces.

(ii) A pilot proficiency check on night vision goggle operations under part 135 of this chapter conducted by an Examiner or Check Airman.

(iii) A pilot proficiency check on night vision goggle operations conducted by a night vision goggle manufacturer or authorized instructor, when the pilot—

(A) Is employed by a Federal, State, county, or municipal law enforcement agency; and

(B) Has logged at least 20 hours as pilot in command in night vision goggle operations.

* * * * *

■ 11. Amend § 61.35 by revising paragraph (a)(2)(iv) to read as follows:

§ 61.35 Knowledge test: Prerequisites and passing grades.

(a) * * *

(2) * * *

(iv) If the permanent mailing is a post office box number, then the applicant must provide a current residential address.

* * * * *

■ 12. Amend § 61.39 by revising paragraphs (a)(4), (a)(6)(i), (b)(2), (c)(1), (c)(2), (d), and (e) to read as follows:

§ 61.39 Prerequisites for practical tests.

(a) * * *

(4) Hold at least a third-class medical certificate, if a medical certificate is required;

* * * * *

(6) * * *

(i) Has received and logged training time within 2 calendar months preceding the month of application in preparation for the practical test;

* * * * *

(b) * * *

(2) Is employed by the U.S. Armed Forces as a flight crewmember in U.S. military air transport operations at the time of the practical test and has completed the pilot in command aircraft qualification training program that is appropriate to the pilot certificate and rating sought.

(c) * * *

(1) Holds a foreign pilot license issued by a contracting State to the Convention

on International Civil Aviation that authorizes at least the privileges of the pilot certificate sought;

(2) Is only applying for a type rating; or

* * * * *

(d) If all increments of the practical test for a certificate or rating are not completed on the same date, then all the remaining increments of the test must be completed within 2 calendar months after the month the applicant began the test.

(e) If all increments of the practical test for a certificate or rating are not completed within 2 calendar months after the month the applicant began the test, the applicant must retake the entire practical test.

■ 13. Amend § 61.43 by revising paragraphs (a) and (b) to read as follows:

§ 61.43 Practical tests: General procedures.

(a) Completion of the practical test for a certificate or rating consists of—

(1) Performing the tasks specified in the areas of operation for the airman certificate or rating sought within the approved practical test standards;

(2) Demonstrating mastery of the aircraft by performing each task successfully;

(3) Demonstrating proficiency and competency within the approved standards; and

(4) Demonstrating sound judgment.

(b) The pilot flight crew complement required during the practical test is based on one of the following requirements that applies to the aircraft being used on the practical test:

(1) If the aircraft's FAA-approved flight manual requires the pilot flight crew complement be a single pilot, then the applicant must demonstrate single pilot proficiency on the practical test.

(2) If the aircraft's type certification data sheet requires the pilot flight crew complement be a single pilot, then the applicant must demonstrate single pilot proficiency on the practical test.

(3) If the FAA Flight Standardization Board report, FAA-approved aircraft flight manual, or aircraft type certification data sheet allows the pilot flight crew complement to be either a single pilot, or a pilot and a copilot, then the applicant may demonstrate single pilot proficiency or have a copilot on the practical test. If the applicant performs the practical test with a copilot, the limitation of ''Second in Command Required'' will be placed on the applicant's pilot certificate. The limitation may be removed if the applicant passes the practical test by demonstrating single-pilot proficiency in the aircraft in which single-pilot privileges are sought.

* * * * *

■ 14. Amend § 61.45 by revising paragraphs (a)(1)(ii), (a)(2)(i), (a)(2)(iii), and (c) to read as follows:

§ 61.45 Practical tests: Required aircraft and equipment.

(a) * * *

(1) * * *

(ii) Has a standard airworthiness certificate or special airworthiness certificate in the limited, primary, or light-sport category.

(2) * * *

(i) An aircraft that has an airworthiness certificate other than a standard airworthiness certificate or special airworthiness certificate in the limited, primary, or light-sport category, but that otherwise meets the requirements of paragraph (a)(1) of this section;

* * * * *

(iii) A military aircraft of the same category, class, and type, if aircraft class and type are appropriate, for which the applicant is applying for a certificate or rating, and provided—

(A) The aircraft is under the direct operational control of the U.S. Armed Forces;

(B) The aircraft is airworthy under the maintenance standards of the U.S. Armed Forces; and

(C) The applicant has a letter from his or her commanding officer authorizing the use of the aircraft for the practical test.

* * * * *

(c) *Required controls.* Except for lighter-than-air aircraft, and a glider without an engine, an aircraft used for a practical test must have engine power controls and flight controls that are easily reached and operable in a conventional manner by both pilots, unless the Examiner determines that the practical test can be conducted safely in the aircraft without the controls easily reached by the Examiner.

* * * * *

■ 15. Amend § 61.51 by:

■ a. Adding new paragraph (b)(3)(iv);

■ b. Revising paragraphs (b)(1)(iv), (b)(2)(v), (b)(3)(iii), (e)(1), (e)(2), (e)(3), (e)(4)(ii), the heading of paragraph (g), and paragraph (g)(4); and

■ c. Adding new paragraphs (j) and (k).

The revisions and additions read as follows:

§ 61.51 Pilot logbooks.

* * * * *

(b) * * *

(1) * * *

(iv) Type and identification of aircraft, flight simulator, flight training device, or aviation training device, as appropriate.

* * * * *

(2) * * *

(v) Training received in a flight simulator, flight training device, or aviation training device from an authorized instructor.

(3) * * *

(iii) Simulated instrument conditions in flight, a flight simulator, flight training device, or aviation training device.

(iv) Use of night vision goggles in an aircraft in flight, in a flight simulator, or in a flight training device.

* * * * *

(e) * * *

(1) A sport, recreational, private, commercial, or airline transport pilot may log pilot in command flight time for flights-

(i) When the pilot is the sole manipulator of the controls of an aircraft for which the pilot is rated, or has sport pilot privileges for that category and class of aircraft, if the aircraft class rating is appropriate;

(ii) When the pilot is the sole occupant in the aircraft;

(iii) When the pilot, except for a holder of a sport or recreational pilot certificate, acts as pilot in command of an aircraft for which more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is conducted; or

(iv) When the pilot performs the duties of pilot in command while under the supervision of a qualified pilot in command provided—

(A) The pilot performing the duties of pilot in command holds a commercial or airline transport pilot certificate and aircraft rating that is appropriate to the category and class of aircraft being flown, if a class rating is appropriate;

(B) The pilot performing the duties of pilot in command is undergoing an approved pilot in command training program that includes ground and flight training on the following areas of operation—

(*1*) Preflight preparation;

(*2*) Preflight procedures;

(*3*) Takeoff and departure;

(*4*) In-flight maneuvers;

(*5*) Instrument procedures;

(*6*) Landings and approaches to landings;

(*7*) Normal and abnormal procedures;

(*8*) Emergency procedures; and

(*9*) Postflight procedures;

(C) The supervising pilot in command holds—

(*1*) A commercial pilot certificate and flight instructor certificate, and aircraft

rating that is appropriate to the category, class, and type of aircraft being flown, if a class or type rating is required; or

(*2*) An airline transport pilot certificate and aircraft rating that is appropriate to the category, class, and type of aircraft being flown, if a class or type rating is required; and

(D) The supervising pilot in command logs the pilot in command training in the pilot's logbook, certifies the pilot in command training in the pilot's logbook and attests to that certification with his or her signature, and flight instructor certificate number.

(2) If rated to act as pilot in command of the aircraft, an airline transport pilot may log all flight time while acting as pilot in command of an operation requiring an airline transport pilot certificate.

(3) A certificated flight instructor may log pilot in command flight time for all flight time while serving as the authorized instructor in an operation if the instructor is rated to act as pilot in command of that aircraft.

(4) * * *

(ii) Has a solo flight endorsement as required under § 61.87 of this part; and

* * * * *

(g) *Logging instrument time.* * * *

* * * * *

(4) A person can use time in a flight simulator, flight training device, or aviation training device for acquiring instrument aeronautical experience for a pilot certificate, rating, or instrument recency experience, provided an authorized instructor is present to observe that time and signs the person's logbook or training record to verify the time and the content of the training session.

* * * * *

(j) *Aircraft requirements for logging flight time.* For a person to log flight time, the time must be acquired in an aircraft that is identified as an aircraft under § 61.5(b), and is—

(1) An aircraft of U.S. registry with either a standard or special airworthiness certificate;

(2) An aircraft of foreign registry with an airworthiness certificate that is approved by the aviation authority of a foreign country that is a Member State to the Convention on International Civil Aviation Organization;

(3) A military aircraft under the direct operational control of the U.S. Armed Forces; or

(4) A public aircraft under the direct operational control of a Federal, State, county, or municipal law enforcement agency, if the flight time was acquired by the pilot while engaged on an official law enforcement flight for a Federal, State, County, or Municipal law enforcement agency.

(k) *Logging night vision goggle time.* (1) A person may log night vision goggle time only for the time the person uses night vision goggles as the primary visual reference of the surface and operates:

(i) An aircraft during a night vision goggle operation; or

(ii) A flight simulator or flight training device with the lighting system adjusted to represent the period beginning 1 hour after sunset and ending 1 hour before sunrise.

(2) An authorized instructor may log night vision goggle time when that person conducts training using night vision goggles as the primary visual reference of the surface and operates:

(i) An aircraft during a night goggle operation; or

(ii) A flight simulator or flight training device with the lighting system adjusted to represent the period beginning 1 hour after sunset and ending 1 hour before sunrise.

(3) To log night vision goggle time to meet the recent night vision goggle experience requirements under § 61.57(f), a person must log the information required under § 61.51(b).

■ 16. Amend § 61.53 by revising paragraphs (a) introductory text, (c)(1), and (c)(2) to read as follows:

§ 61.53 Prohibition on operations during medical deficiency.

(a) *Operations that require a medical certificate.* Except as provided for in paragraph (b) of this section, no person who holds a medical certificate issued under part 67 of this chapter may act as pilot in command, or in any other capacity as a required pilot flight crewmember, while that person:

* * * * *

(c) * * *

(1) Paragraph (a) of this section if that person holds a medical certificate issued under part 67 of this chapter and does not hold a U.S. driver's license.

(2) Paragraph (b) of this section if that person holds a U.S. driver's license.

* * * * *

■ 17. Amend § 61.55 by revising paragraph (a)(1) to read as follows:

§ 61.55 Second in command qualifications.

(a) * * *

(1) At least a private pilot certificate with the appropriate category and class rating; and

* * * * *

■ 18. Amend § 61.56 by revising paragraph (f) to read as follows:

§ 61.56 Flight review.

* * * * *

(f) A person who holds a flight instructor certificate and who has, within the period specified in paragraph (c) of this section, satisfactorily completed a renewal of a flight instructor certificate under the provisions in § 61.197 need not accomplish the one hour of ground training specified in paragraph (a) of this section.

* * * * *

■ 19. Amend § 61.57 by revising paragraphs (c) and (d); and adding new paragraphs (f) and (g) to read as follows:

§ 61.57 Recent flight experience: Pilot in command.

* * * * *

(c) *Instrument experience.* Except as provided in paragraph (e) of this section, a person may act as pilot in command under IFR or weather conditions less than the minimums prescribed for VFR only if:

(1) *Use of an airplane, powered-lift, helicopter, or airship for maintaining instrument experience.* Within the 6 calendar months preceding the month of the flight, that person performed and logged at least the following tasks and iterations in an airplane, powered-lift, helicopter, or airship, as appropriate, for the instrument rating privileges to be maintained in actual weather conditions, or under simulated conditions using a view-limiting device that involves having performed the following—

(i) Six instrument approaches.

(ii) Holding procedures and tasks.

(iii) Intercepting and tracking courses through the use of navigational electronic systems.

(2) *Use of a flight simulator or flight training device for maintaining instrument experience.* Within the 6 calendar months preceding the month of the flight, that person performed and logged at least the following tasks and iterations in a flight simulator or flight training device, provided the flight simulator or flight training device represents the category of aircraft for the instrument rating privileges to be maintained and involves having performed the following—

(i) Six instrument approaches.

(ii) Holding procedures and tasks.

(iii) Intercepting and tracking courses through the use of navigational electronic systems.

(3) *Use of an aviation training device for maintaining instrument experience.* Within the 2 calendar months preceding the month of the flight, that person performed and logged at least the following tasks, iterations, and time in an aviation training device and has performed the following—

(i) Three hours of instrument experience.

(ii) Holding procedures and tasks.

(iii) Six instrument approaches.

(iv) Two unusual attitude recoveries while in a descending, V_{ne} airspeed condition and two unusual attitude recoveries while in an ascending, stall speed condition.

(v) Interception and tracking courses through the use of navigational electronic systems.

(4) *Combination of completing instrument experience in an aircraft and a flight simulator, flight training device, and aviation training device.* A person who elects to complete the instrument experience with a combination of an aircraft, flight simulator or flight training device, and aviation training device must have performed and logged the following within the 6 calendar months preceding the month of the flight—

(i) Instrument experience in an airplane, powered-lift, helicopter, or airship, as appropriate, for the instrument rating privileges to be maintained, performed in actual weather conditions, or under simulated weather conditions while using a view-limiting device, on the following instrument currency tasks:

(A) Instrument approaches.

(B) Holding procedures and tasks.

(C) Interception and tracking courses through the use of navigational electronic systems.

(ii) Instrument experience in a flight simulator or flight training device that represents the category of aircraft for the instrument rating privileges to be maintained and involves performing at least the following tasks—

(A) Instrument approaches.

(B) Holding procedures and tasks.

(C) Interception and tracking courses through the use of navigational electronic systems.

(iii) Instrument experience in an aviation training device that represents the category of aircraft for the instrument rating privileges to be maintained and involves performing at least the following tasks—

(A) Six instrument approaches.

(B) Holding procedures and tasks.

(C) Interception and tracking courses through the use of navigational electronic systems.

(5) *Combination of completing instrument experience in a flight simulator or flight training device, and an aviation training device.* A person who elects to complete the instrument experience with a combination of a flight simulator, flight training device, and aviation training device must have performed the following within the 6 calendar months preceding the month of the flight—

(i) Instrument recency experience in a flight simulator or flight training device that represents the category of aircraft for the instrument rating privileges to be maintained and involves having performed the following tasks:

(A) Six instrument approaches.

(B) Holding procedures and tasks.

(C) Interception and tracking courses through the use of navigational electronic systems.

(ii) Three hours of instrument experience in an aviation training device that represents the category of aircraft for the instrument rating privileges to be maintained and involves performing at least the following tasks—

(A) Six instrument approaches.

(B) Holding procedures and tasks.

(C) Interception and tracking courses through the use of navigational electronic systems.

(D) Two unusual attitude recoveries while in a descending, V_{ne} airspeed condition and two unusual attitude recoveries while in an ascending, stall speed condition.

(6) Maintaining instrument recent experience in a glider.

(i) Within the 6 calendar months preceding the month of the flight, that person must have performed and logged at least the following instrument currency tasks, iterations, and flight time, and the instrument currency must have been performed in actual weather conditions or under simulated weather conditions—

(A) One hour of instrument flight time in a glider or in a single engine airplane using a view-limiting device while performing interception and tracking courses through the use of navigation electronic systems.

(B) Two hours of instrument flight time in a glider or a single engine airplane with the use of a view-limiting device while performing straight glides, turns to specific headings, steep turns, flight at various airspeeds, navigation, and slow flight and stalls.

(ii) Before a pilot is allowed to carry a passenger in a glider under IFR or in weather conditions less than the minimums prescribed for VFR, that pilot must—

(A) Have logged and performed 2 hours of instrument flight time in a glider within the 6 calendar months preceding the month of the flight.

(B) Use a view-limiting-device while practicing performance maneuvers, performance airspeeds, navigation, slow flight, and stalls.

(d) *Instrument proficiency check.* Except as provided in paragraph (e) of this section, a person who does not meet the instrument experience requirements of paragraph (c) of this section within the 12 calendar months preceding the month of the flight may not serve as pilot in command under IFR or in weather conditions less than the minimums prescribed for VFR until having passed an instrument proficiency check that consists of the areas of operation and instrument tasks required in the instrument rating practical test standards.

* * * * *

(f) *Night vision goggle operating experience.* (1) A person may act as pilot in command in a night vision goggle operation with passengers on board only if, within 2 calendar months preceding the month of the flight, that person performs and logs the following tasks as the sole manipulator of the controls on a flight during a night vision goggle operation—

(i) Three takeoffs and three landings, with each takeoff and landing including a climbout, cruise, descent, and approach phase of flight (only required if the pilot wants to use night vision goggles during the takeoff and landing phases of the flight).

(ii) Three hovering tasks (only required if the pilot wants to use night vision goggles when operating helicopters or powered-lifts during the hovering phase of flight).

(iii) Three area departure and area arrival tasks.

(iv) Three tasks of transitioning from aided night flight (*aided night flight* means that the pilot uses night vision goggles to maintain visual surface reference) to unaided night flight (*unaided night flight* means that the pilot does not use night vision goggles) and back to aided night flight.

(v) Three night vision goggle operations, or when operating helicopters or powered-lifts, six night vision goggle operations.

(2) A person may act as pilot in command using night vision goggles only if, within the 4 calendar months preceding the month of the flight, that person performs and logs the tasks listed in paragraph (f)(1)(i) through (v) of this section as the sole manipulator of the controls during a night vision goggle operation.

(g) *Night vision goggle proficiency check.* A person must either meet the night vision goggle experience requirements of paragraphs (f)(1) or (f)(2) of this section or pass a night vision goggle proficiency check to act as pilot in command using night vision goggles. The proficiency check must be performed in the category of aircraft that is appropriate to the night vision goggle

operation for which the person is seeking the night vision goggle privilege or in a flight simulator or flight training device that is representative of that category of aircraft. The check must consist of the tasks listed in § 61.31(k), and the check must be performed by:

(1) An Examiner who is qualified to perform night vision goggle operations in that same aircraft category and class;

(2) A person who is authorized by the U.S. Armed Forces to perform night vision goggle proficiency checks, provided the person being administered the check is also a member of the U.S. Armed Forces;

(3) A company check pilot who is authorized to perform night vision goggle proficiency checks under parts 121, 125, or 135 of this chapter, provided that both the check pilot and the pilot being tested are employees of that operator;

(4) An authorized flight instructor who is qualified to perform night vision goggle operations in that same aircraft category and class;

(5) A person who is qualified as pilot in command for night vision goggle operations in accordance with paragraph (f) of this section; or

(6) A person approved by the FAA to perform night vision goggle proficiency checks.

■ 20. Revise § 61.63 to read as follows:

§ 61.63 Additional aircraft ratings (other than for ratings at the airline transport pilot certification level).

(a) *General.* For an additional aircraft rating on a pilot certificate, other than for an airline transport pilot certificate, a person must meet the requirements of this section appropriate to the additional aircraft rating sought.

(b) *Additional aircraft category rating.* A person who applies to add a category rating to a pilot certificate:

(1) Must complete the training and have the applicable aeronautical experience.

(2) Must have a logbook or training record endorsement from an authorized instructor attesting that the person was found competent in the appropriate aeronautical knowledge areas and proficient in the appropriate areas of operation.

(3) Must pass the practical test.

(4) Need not take an additional knowledge test if the person holds an airplane, rotorcraft, powered-lift, or airship rating at that pilot certificate level.

(c) *Additional aircraft class rating.* A person who applies for an additional class rating on a pilot certificate:

(1) Must have a logbook or training record endorsement from an authorized instructor attesting that the person was found competent in the appropriate aeronautical knowledge areas and proficient in the appropriate areas of operation.

(2) Must pass the practical test.

(3) Need not meet the specified training time requirements prescribed by this part that apply to the pilot certificate for the aircraft class rating sought; unless, the person only holds a lighter-than-air category rating with a balloon class rating and is seeking an airship class rating, then that person must receive the specified training time requirements and possess the appropriate aeronautical experience.

(4) Need not take an additional knowledge test if the person holds an airplane, rotorcraft, powered-lift, or airship rating at that pilot certificate level.

(d) *Additional aircraft type rating.* Except as provided under paragraph (d)(6) of this section, a person who applies for an aircraft type rating or an aircraft type rating to be completed concurrently with an aircraft category or class rating—

(1) Must hold or concurrently obtain an appropriate instrument rating, except as provided in paragraph (e) of this section.

(2) Must have a logbook or training record endorsement from an authorized instructor attesting that the person is competent in the appropriate aeronautical knowledge areas and proficient in the appropriate areas of operation at the airline transport pilot certification level.

(3) Must pass the practical test at the airline transport pilot certification level.

(4) Must perform the practical test in actual or simulated instrument conditions, except as provided in paragraph (e) of this section.

(5) Need not take an additional knowledge test if the applicant holds an airplane, rotorcraft, powered-lift, or airship rating on the pilot certificate.

(6) In the case of a pilot employee of a part 121 or part 135 certificate holder or of a fractional ownership program manager under subpart K of part 91 of this chapter, the pilot must—

(i) Meet the appropriate requirements under paragraphs (d)(1), (d)(3), and (d)(4) of this section; and

(ii) Receive a flight training record endorsement from the certificate holder attesting that the person completed the certificate holder's approved ground and flight training program.

(e) *Aircraft not capable of instrument maneuvers and procedures.* (1) An applicant for a type rating or a type rating in addition to an aircraft category and/or class rating who provides an aircraft that is not capable of the instrument maneuvers and procedures required on the practical test:

(i) May apply for the type rating, but the rating will be limited to ''VFR only.''

(ii) May have the ''VFR only'' limitation removed for that aircraft type after the applicant:

(A) Passes a practical test in that type of aircraft in actual or simulated instrument conditions;

(B) Passes a practical test in that type of aircraft on the appropriate instrument maneuvers and procedures in § 61.157; or

(C) Becomes qualified under § 61.73(d) for that type of aircraft.

(2) When an instrument rating is issued to a person who holds one or more type ratings, the amended pilot certificate must bear the ''VFR only'' limitation for each aircraft type rating that the person did not demonstrate instrument competency.

(f) *Multiengine airplane with a single-pilot station.* An applicant for a type rating, at other than the ATP certification level, in a multiengine airplane with a single-pilot station must perform the practical test in the multi-seat version of that airplane, or the practical test may be performed in the single-seat version of that airplane if the Examiner is in a position to observe the applicant during the practical test and there is no multi-seat version of that multiengine airplane.

(g) *Single engine airplane with a single-pilot station.* An applicant for a type rating, at other than the ATP certification level, in a single engine airplane with a single-pilot station must perform the practical test in the multi-seat version of that single engine airplane, or the practical test may be performed in the single-seat version of that airplane if the Examiner is in a position to observe the applicant during the practical test and there is no multi-seat version of that single engine airplane.

(h) *Aircraft category and class rating for the operation of aircraft with an experimental certificate.* A person holding a recreational, private, or commercial pilot certificate may apply for a category and class rating limited to a specific make and model of experimental aircraft, provided—

(1) The person logged 5 hours flight time while acting as pilot in command in the same category, class, make, and model of aircraft.

(2) The person received a logbook endorsement from an authorized instructor who determined the pilot's proficiency to act as pilot in command of the same category, class, make, and model of aircraft.

(3) The flight time specified under paragraph (h)(1) of this section was logged between September 1, 2004 and August 31, 2005.

(i) *Waiver authority.* An Examiner who conducts a practical test may waive any task for which the FAA has provided waiver authority.

■ 21. Add a new § 61.64 to read as follows:

§ 61.64 Use of a flight simulator and flight training device.

(a) *Use of a flight simulator for the airplane rating.* If an applicant uses a flight simulator for training or the practical test for an airplane category, class, or type rating—

(1) The flight simulator—

(i) Must represent the category, class, and type of airplane rating (if a type rating is applicable) for the rating sought;

(ii) Must be used in accordance with an approved course of training under part 141 or part 142 of this chapter; or under part 121 or part 135 of this chapter, provided the applicant is a pilot employee of that air carrier operator;

(iii) At a minimum, must be qualified and approved as a Level C flight simulator if the applicant performs any portion of the practical test in the flight simulator; and

(iv) At a minimum, must be qualified and approved as a Level A flight simulator if the applicant uses the flight simulator for any training;

(2) If the type rating is for a turbojet airplane, the applicant must—

(i) Hold a type rating in a turbojet airplane of the same class of airplane, and that type rating may not contain a supervised operating experience limitation;

(ii) Have 1,000 hours of flight time in two different turbojet airplanes of the same class of airplane;

(iii) Have been appointed by the U.S. Armed Forces as pilot in command in a turbojet airplane of the same class of airplane; or

(iv) Have 500 hours of flight time in the same type of airplane.

(3) If the type rating is for a turbo propeller airplane, the applicant must—

(i) Hold a type rating in a turbo-propeller airplane of the same class of airplane, and that type rating may not contain a supervised operating experience limitation;

(ii) Have 1,000 hours of flight time in two different turbo-propeller airplanes of the same class of airplane;

(iii) Have been appointed by the U.S. Armed Forces as pilot in command in a turbo-propeller airplane of the same class of airplane; or

(iv) Have 500 hours of flight time in the same type of airplane.

(4) If the applicant does not meet the requirements of paragraph (a)(2) or (a)(3) of this section, then—

(i) The applicant must complete the following tasks on the practical test in the airplane of the category, class, and type of airplane rating (if a type rating is applicable) for which the airplane rating applies: preflight inspection, normal takeoff, normal instrument landing system approach, missed approach, and normal landing.

(ii) After passing the practical test, the applicant's pilot certificate must state: ''The [name the category, class, and type of airplane rating (if a type rating is applicable)] is subject to additional pilot in command limitations,'' and the applicant is restricted from serving as pilot in command in that category, class, and type of airplane rating (if a type rating is applicable).

(iii) The limitation described under paragraph (a)(4)(ii) of this section may be removed from the applicant's pilot certificate if the applicant—

(A) Logs 25 hours of flight time in the category and class of airplane for the rating sought, and if a type rating is being sought, the flight time must be performed in the same type of airplane for the type rating sought;

(B) Performs 25 hours of flight time under the direct observation of the pilot in command who holds the appropriate airplane category, class, and type rating, without limitations, in the same category, class, and type of airplane rating, if a type rating is applicable;

(C) Logs each flight and the pilot in command who observed the flight attests to each flight;

(D) Obtains the flight time while in the pilot in command seat of the appropriate airplane category, class, and type, if a type rating is appropriate; and

(E) Has an Examiner review the pilot logbook and endorse that logbook, attesting to compliance with the required supervised operating experience.

(b) *Use of a flight training device for the airplane rating.* If an applicant uses a flight training device for training for the airplane category, class, or type rating, the applicant must meet the requirements of paragraph (a)(2), (a)(3) or (a)(4) of this section, and the flight training device—

(1) Must represent the category, class, and type of airplane rating (if a type rating is applicable) for the rating.

(2) Must be used in accordance with an approved course of training under part 141 or part 142 of this chapter, or under part 121 or part 135 of this chapter, provided the applicant is a pilot employee of that air carrier operator.

(3) Must be qualified and approved at or above a Level 2 flight training device if the applicant completes the entire practical test in the airplane.

(4) Must be qualified and approved at or above a Level 5 flight training device if the applicant uses a flight simulator for any portion of the practical test.

(c) *Use of a flight simulator for the helicopter rating.* If an applicant uses a flight simulator for training or the practical test for the helicopter class or type rating,

(1) The flight simulator—

(i) Must represent the class and type of helicopter rating (if a type rating is applicable) for the rating;

(ii) Must be used in accordance with an approved course of training under part 141 or part 142 of this chapter, or under part 135 of this chapter, provided the applicant is a pilot employee of that part 135 operator;

(iii) At a minimum, must be qualified and approved as a Level C flight simulator if the applicant performs any portion of the practical test in a flight simulator; and

(iv) At a minimum, must be qualified and approved as a Level A flight simulator if the applicant uses a flight simulator for any training.

(2) The applicant must meet one of the following requirements—

(i) Hold a type rating in a helicopter and that type rating may not contain the supervised operating experience limitation;

(ii) Have been appointed by the U.S. Armed Forces as pilot in command of a helicopter;

(iii) Have 500 hours of flight time in the type of helicopter; or

(iv) Have 1,000 hours of flight time in two different types of helicopters.

(3) If the applicant does not meet any of the requirements of paragraph (c)(2) of this section, then—

(i) The applicant must complete the following tasks on the practical test in the helicopter class and type rating (if a type rating is applicable) for which the rating applies: preflight inspection, normal takeoff, normal instrument landing system approach, missed approach, and normal landing.

(ii) After passing the practical test, the applicant's pilot certificate must state: ''The [name the helicopter class, and type of helicopter rating (if a type rating is applicable)] rating is subject to additional pilot in command limitations,'' and the applicant is restricted from serving as pilot in command in that helicopter class and type of helicopter rating (if a type rating is applicable).

(iii) The limitation described under paragraph (c)(3)(ii) of this section may be removed from the pilot certificate if the applicant complies with the following—

(A) Logs 25 hours of flight time in the class of helicopter for the rating sought, if the person applied for a type rating, the flight time must be performed in the same type of helicopter for the type rating sought;

(B) Performs the 25 hours of flight time under the direct observation of the pilot in command who holds the appropriate class and type of helicopter rating (if a type rating is applicable), without limitations, in the same class, and type of helicopter rating, if a type rating is applicable;

(C) Logs each flight and the pilot in command who observed the flight attests to each flight;

(D) Performs the flight time while in the pilot in command seat of the appropriate class and type of helicopter rating, if a type rating is appropriate; and

(E) Has an Examiner review the pilot logbook and endorse that logbook, attesting to compliance with the required supervised operating experience.

(d) *Use of a flight training device for the helicopter rating.* If an applicant uses a flight training device for training for the helicopter class or type rating, the applicant must meet the requirements of either paragraph (c)(2) or (3) of this section and the flight training device—

(1) Must represent the class and type of helicopter rating (if a type rating is applicable) for the rating.

(2) Must be used in accordance with an approved course of training under part 141 or part 142 of this chapter, or under part 135 of this chapter, provided the applicant is a pilot employee of that part 135 operator.

(3) Must be qualified and approved at or above a Level 2 flight training device if the applicant completes the entire practical test in the helicopter.

(4) Must be qualified and approved at or above a Level 5 flight training device if the applicant uses a flight simulator for any portion of the practical test.

(e) *Use of a flight simulator for the powered-lift rating.* If an applicant uses a flight simulator for training or the practical test for the powered-lift category or type rating—

(1) The flight simulator—

(i) Must represent the category and type of powered-lift rating (if a type rating is applicable) for the rating;

(ii) Must be used in accordance with an approved course of training under part 141 or part 142 of this chapter, or under part 121 or part 135 of this chapter, provided the applicant is a pilot employee of that air carrier operator;

(iii) At a minimum, must be qualified and approved as a Level C flight simulator if the applicant performs any portion of the practical test in a flight simulator; and

(iv) At a minimum, must be qualified and approved as a Level A flight simulator if the applicant uses a flight simulator for any training.

(2) The applicant must meet one of the following requirements—

(i) Hold a type rating in a powered-lift without a supervised operating experience limitation;

(ii) Have been appointed by the U.S. Armed Forces as pilot in command of a powered-lift;

(iii) Have 500 hours of flight time in the type of powered-lift; or

(iv) Have 1,000 hours of flight time in two different types of powered-lifts.

(3) If the applicant does not meet any of the requirements of paragraph (e)(2) of this section, then—

(i) The applicant must complete the following tasks on the practical test in the powered-lift of the category and type of powered-lift rating (if a type rating is applicable) for which the rating applies: preflight inspection, normal takeoff, normal instrument landing system approach, missed approach, and normal landing.

(ii) After passing the practical test, the applicant's pilot certificate must state: ''The [name of the category and type of powered-lift rating (if a type rating is applicable)] rating is subject to additional pilot in command limitations,'' and that applicant is restricted from serving as pilot in command in that category and type of powered-lift rating (if a type rating is applicable).

(iii) The limitation described under paragraph (e)(3)(ii) of this section may be removed from the pilot certificate if the applicant complies with the following—

(A) Logs 25 hours of flight time in the powered-lift category for the rating sought, and if a type rating is being sought, the flight time must be performed in the same type of powered-lift for the type rating sought;

(B) Performs the 25 hours flight time under the direct observation of the pilot in command who holds the category and type of powered-lift rating (if a type rating is applicable), without limitations, in the same category and type of powered-lift rating, if a type rating is applicable;

(C) Logs each flight and the pilot in command who observed the flight attests to each flight;

(D) Performs the flight time while in the pilot in command seat of the appropriate category and type of powered-lift rating, if a type rating is appropriate; and

(E) Has an Examiner review the pilot logbook and endorse that logbook, attesting to compliance with the required supervised operating experience.

(f) *Use of a flight training device for the powered-lift rating.* Whenever an applicant uses a flight training device for training for the powered-lift category or type rating, the flight training device must meet the following requirements, and the applicant must meet the requirements of either paragraph (e)(2) or (e)(3) of this section.

(1) The flight training device must represent the class and type of powered-lift rating (if a type rating is applicable) for the rating.

(2) The flight training device must be used in accordance with an approved course of training under part 141 or part 142 of this chapter; or under part 121 or part 135 of this chapter, provided the applicant is a pilot employee of that air carrier operator.

(3) If the applicant completes the entire practical test in the powered-lift, the flight training device used for training must be qualified and approved at or above a Level 2 flight training device.

(4) If an applicant uses a flight simulator for any portion of the practical test, the flight training device used for training must be qualified and approved at or above a Level 5 flight training device.

■ 22. Amend § 61.65 by:

■ a. Revising paragraph (a)(1);

■ b. Revising paragraph (d);

■ c. Redesignating existing paragraph (e) as paragraph (g);

■ d. Adding new paragraphs (e), (f), and (h); and

■ e. Revising newly re-designated paragraph (g).

The revisons and additions read as follows:

§ 61.65 Instrument rating requirements.

(a) * * *

(1) Hold at least a private pilot certificate with an airplane, helicopter, or powered-lift rating appropriate to the instrument rating sought;

* * * * *

(d) *Aeronautical experience for the instrument-airplane rating.* A person who applies for an instrument-airplane rating must have logged:

(1) Fifty hours of cross country flight time as pilot in command, of which 10 hours must have been in an airplane; and

(2) Forty hours of actual or simulated instrument time in the areas of operation listed in paragraph (c) of this section, of which 15 hours must have been received from an authorized instructor who holds an instrument-airplane rating, and the instrument time includes:

(i) Three hours of instrument flight training from an authorized instructor in an airplane that is appropriate to the instrument-airplane rating within 2 calendar months before the date of the practical test; and

(ii) Instrument flight training on cross country flight procedures, including one cross country flight in an airplane with an authorized instructor, that is performed under instrument flight rules, when a flight plan has been filed with an air traffic control facility, and that involves—

(A) A flight of 250 nautical miles along airways or by directed routing from an air traffic control facility;

(B) An instrument approach at each airport; and

(C) Three different kinds of approaches with the use of navigation systems.

(e) *Aeronautical experience for the instrument-helicopter rating.* A person who applies for an instrument-helicopter rating must have logged:

(1) Fifty hours of cross country flight time as pilot in command, of which 10 hours must have been in a helicopter; and

(2) Forty hours of actual or simulated instrument time in the areas of operation listed under paragraph (c) of this section, of which 15 hours must have been with an authorized instructor who holds an instrument-helicopter rating, and the instrument time includes:

(i) Three hours of instrument flight training from an authorized instructor in a helicopter that is appropriate to the instrument-helicopter rating within 2 calendar months before the date of the practical test; and

(ii) Instrument flight training on cross country flight procedures, including one cross country flight in a helicopter with an authorized instructor that is performed under instrument flight rules and a flight plan has been filed with an air traffic control facility, and involves—

(A) A flight of 100 nautical miles along airways or by directed routing from an air traffic control facility;

(B) An instrument approach at each airport; and

(C) Three different kinds of approaches with the use of navigation systems.

(f) *Aeronautical experience for the instrument-powered-lift rating.* A person who applies for an instrument-powered-lift rating must have logged:

(1) Fifty hours of cross country flight time as pilot in command, of which 10 hours cross country must have been in a powered-lift; and

(2) Forty hours of actual or simulated instrument time in the areas of operation listed under paragraph (c) of this section, of which 15 hours must have been received from an authorized instructor who holds an instrument-powered-lift rating, and the instrument time includes:

(i) Three hours of instrument flight training from an authorized instructor in a powered-lift that is appropriate to the instrument-powered-lift rating within 2 calendar months before the date of the practical test; and

(ii) Instrument flight training on cross country flight procedures, including one cross country flight in a powered-lift with an authorized instructor that is performed under instrument flight rules, when a flight plan has been filed with an air traffic control facility, that involves—

(A) A flight of 250 nautical miles along airways or by directed routing from an air traffic control facility;

(B) An instrument approach at each airport; and

(C) Three different kinds of approaches with the use of navigation systems.

(g) *Use of flight simulators or flight training devices.* If the instrument time was provided by an authorized instructor in a flight simulator or flight training device—

(1) A maximum of 30 hours may be performed in that flight simulator or flight training device if the instrument time was completed in accordance with part 142 of this chapter; or

(2) A maximum of 20 hours may be performed in that flight simulator or flight training device if the instrument time was not completed in accordance with part 142 of this chapter.

(h) *Use of an aviation training device.* A maximum of 10 hours of instrument time received in an aviation training device may be credited for the instrument time requirements of this section if—

(1) The device is approved and authorized by the FAA;

(2) An authorized instructor provides the instrument time in the device;

(3) No more than 10 hours of instrument time in a flight simulator or flight training device was credited for the instrument time requirements of this section;

(4) A view-limiting device was worn by the applicant when logging instrument time in the device; and

(5) The FAA approved the instrument training and instrument tasks performed in the device.

■ 23. Amend § 61.69 by revising paragraphs (a)(1), (a)(4), and (a)(6) introductory text to read as follows:

§ 61.69 Glider and unpowered ultralight vehicle towing: Experience and training requirements.

(a) * * *

(1) Holds a private, commercial or airline transport pilot certificate with a category rating for powered aircraft;

* * * * *

(4) Except as provided in paragraph (b) of this section, has logged at least three flights as the sole manipulator of the controls of an aircraft while towing a glider or unpowered ultralight vehicle, or has simulated towing flight procedures in an aircraft while accompanied by a pilot who meets the requirements of paragraphs (c) and (d) of this section.

* * * * *

(6) Within 24 calendar months before the flight has—

* * * * *

■ 24. Revise § 61.73 to read as follows:

§ 61.73 Military pilots or former military pilots: Special rules.

(a) *General.* Except for a person who has been removed from flying status for lack of proficiency or because of a disciplinary action involving aircraft operations, a U.S. military pilot or former military pilot who meets the requirements of this section may apply, on the basis of his or her military pilot qualifications, for:

(1) A commercial pilot certificate with the appropriate aircraft category and class rating.

(2) An instrument rating with the appropriate aircraft rating.

(3) A type rating.

(b) *Military pilots and former military pilots in the U.S. Armed Forces.* A person who qualifies as a military pilot or former military pilot in the U.S. Armed Forces may apply for a pilot certificate and ratings under paragraph (a) of this section if that person—

(1) Presents evidentiary documents described under paragraphs (h)(1), (2), and (3) of this section that show the person's status in the U.S. Armed Forces.

(2) Has passed the military competency aeronautical knowledge test on the appropriate parts of this chapter

for commercial pilot privileges and limitations, air traffic and general operating rules, and accident reporting rules.

(3) Presents official U.S. military records that show compliance with one of the following requirements—

(i) Before the date of the application, passing an official U.S. military pilot and instrument proficiency check in a military aircraft of the kind of aircraft category, class, and type, if class or type of aircraft is applicable, for the ratings sought; or

(ii) Before the date of application, logging 10 hours of pilot time as a military pilot in a U.S. military aircraft in the kind of aircraft category, class, and type, if a class rating or type rating is applicable, for the aircraft rating sought.

(c) *A military pilot in the Armed Forces of a foreign contracting State to the Convention on International Civil Aviation.* A person who is a military pilot in the Armed Forces of a foreign contracting State to the Convention on International Civil Aviation and is assigned to pilot duties in the U.S. Armed Forces, for purposes other than receiving flight training, may apply for a commercial pilot certificate and ratings under paragraph (a) of this section, provided that person—

(1) Presents evidentiary documents described under paragraph (h)(4) of this section that show the person is a military pilot in the Armed Forces of a foreign contracting State to the Convention on International Civil Aviation, and is assigned to pilot duties in the U.S. Armed Forces, for purposes other than receiving flight training.

(2) Has passed the military competency aeronautical knowledge test on the appropriate parts of this chapter for commercial pilot privileges and limitations, air traffic and general operating rules, and accident reporting rules.

(3) Presents official U.S. military records that show compliance with one of the following requirements:

(i) Before the date of the application, passed an official U.S. military pilot and instrument proficiency check in a military aircraft of the kind of aircraft category, class, or type, if class or type of aircraft is applicable, for the ratings; or

(ii) Before the date of the application, logged 10 hours of pilot time as a military pilot in a U.S. military aircraft of the kind of category, class, and type of aircraft, if a class rating or type rating is applicable, for the aircraft rating.

(d) *Instrument rating.* A person who is qualified as a U.S. military pilot or former military pilot may apply for an instrument rating to be added to a pilot certificate if that person—

(1) Has passed an instrument proficiency check in the U.S. Armed Forces in the aircraft category for the instrument rating sought; and

(2) Has an official U.S. Armed Forces record that shows the person is instrument pilot qualified by the U.S. Armed Forces to conduct instrument flying on Federal airways in that aircraft category and class for the instrument rating sought.

(e) *Aircraft type rating.* An aircraft type rating may only be issued for a type of aircraft that has a comparable civilian type designation by the Administrator.

(f) *Aircraft type rating placed on an airline transport pilot certificate.* A person who is a military pilot or former military pilot of the U.S. Armed Forces and requests an aircraft type rating to be placed on an existing U.S. airline transport pilot certificate may be issued the rating at the airline transport pilot certification level, provided that person:

(1) Holds a category and class rating for that type of aircraft at the airline transport pilot certification level; and

(2) Has passed an official U.S. military pilot check and instrument proficiency check in that type of aircraft.

(g) *Flight instructor certificate and ratings.* A person who can show official U.S. military documentation of being a U.S. military instructor pilot or U.S. military pilot examiner, or a former instructor pilot or pilot examiner may apply for and be issued a flight instructor certificate with the appropriate ratings if that person:

(1) Holds a commercial or airline transport pilot certificate with the appropriate aircraft category and class rating, if a class rating is appropriate, for the flight instructor rating sought;

(2) Holds an instrument rating, or has instrument privileges, on the pilot certificate that is appropriate to the flight instructor rating sought; and

(3) Presents the following documents:

(i) A knowledge test report that shows the person passed a knowledge test on the aeronautical knowledge areas listed under § 61.185(a) appropriate to the flight instructor rating sought and the knowledge test was passed within the preceding 24 calendar months prior to the month of application. If the U.S. military instructor pilot or pilot examiner already holds a flight instructor certificate, holding of a flight instructor certificate suffices for the knowledge test report.

(ii) An official U.S. Armed Forces record or order that shows the person is or was qualified as a U.S. Armed Forces military instructor pilot or pilot examiner for the flight instructor rating sought.

(iii) An official U.S. Armed Forces record or order that shows the person completed a U.S. Armed Forces' instructor pilot or pilot examiner training course and received an aircraft rating qualification as a military instructor pilot or pilot examiner that is appropriate to the flight instructor rating sought.

(iv) An official U.S. Armed Forces record or order that shows the person passed a U.S. Armed Forces instructor pilot or pilot examiner proficiency check in an aircraft as a military instructor pilot or pilot examiner that is appropriate to the flight instructor rating sought.

(h) *Documents for qualifying for a pilot certificate and rating.* The following documents are required for a person to apply for a pilot certificate and rating:

(1) An official U.S. Armed Forces record that shows the person is or was a military pilot.

(2) An official U.S. Armed Forces record that shows the person graduated from a U.S. Armed Forces undergraduate pilot training school and received a rating qualification as a military pilot.

(3) An official U.S. Armed Forces record that shows the pilot passed a pilot proficiency check and instrument proficiency check in an aircraft as a military pilot.

(4) If a person is a military pilot in the Armed Forces from a foreign contracting State to the Convention on International Civil Aviation and is applying for a pilot certificate and rating, that person must present the following:

(i) An official U.S. Armed Forces record that shows the person is a military pilot in the U.S. Armed Forces;

(ii) An official U.S. Armed Forces record that shows the person is assigned as a military pilot in the U.S. Armed Forces for purposes other than receiving flight training;

(iii) An official record that shows the person graduated from a military undergraduate pilot training school from the Armed Forces from a foreign contracting State to the Convention on International Civil Aviation or from the U.S. Armed Forces, and received a qualification as a military pilot; and

(iv) An official U.S. Armed Forces record that shows that the person passed a pilot proficiency check and instrument proficiency check in an aircraft as a military pilot in the U.S. Armed Forces.

■ 25. Amend § 61.75 by revising paragraphs (a), (b) introductory text,

(b)(2), (b)(3), (b)(4), (c), (d) introductory text, (e)(1), (f), and (g), and removing paragraph (e)(4).

The revisions read as follows:

§ 61.75 Private pilot certificate issued on the basis of a foreign pilot license.

(a) *General.* A person who holds a foreign pilot license at the private pilot level or higher that was issued by a contracting State to the Convention on International Civil Aviation may apply for and be issued a U.S. private pilot certificate with the appropriate ratings if the foreign pilot license meets the requirements of this section.

(b) *Certificate issued.* A U.S. private pilot certificate issued under this section must specify the person's foreign license number and country of issuance. A person who holds a foreign pilot license issued by a contracting State to the Convention on International Civil Aviation may be issued a U.S. private pilot certificate based on the foreign pilot license without any further showing of proficiency, provided the applicant:

* * * * *

(2) Holds a foreign pilot license, at the private pilot license level or higher, that does not contain a limitation stating that the applicant has not met all of the standards of ICAO for that license;

(3) Does not hold a U.S. pilot certificate other than a U.S. student pilot certificate;

(4) Holds a medical certificate issued under part 67 of this chapter or a medical license issued by the country that issued the person's foreign pilot license; and

* * * * *

(c) *Aircraft ratings issued.* Aircraft ratings listed on a person's foreign pilot license, in addition to any issued after testing under the provisions of this part, may be placed on that person's U.S. pilot certificate for private pilot privileges only.

(d) *Instrument ratings issued.* A person who holds an instrument rating on the foreign pilot license issued by a contracting State to the Convention on International Civil Aviation may be issued an instrument rating on a U.S. pilot certificate provided:

* * * * *

(e) * * *

(1) May act as pilot in command of a civil aircraft of the United States in accordance with the pilot privileges authorized by this part and the limitations placed on that U.S. pilot certificate;

* * * * *

(f) *Limitation on licenses used as the basis for a U.S. certificate.* A person may use only one foreign pilot license as a basis for the issuance of a U.S. pilot certificate. The foreign pilot license and medical certification used as a basis for issuing a U.S. pilot certificate under this section must be written in English or accompanied by an English transcription that has been signed by an official or representative of the foreign aviation authority that issued the foreign pilot license.

(g) *Limitation placed on a U.S. pilot certificate.* A U.S. pilot certificate issued under this section can only be exercised when the pilot has the foreign pilot license, upon which the issuance of the U.S. pilot certificate was based, in the holder's possession or readily accessible in the aircraft.

■ 26. Amend § 61.77 by:

■ a. Revising the section heading;

■ b. Revising paragraphs (a)(2), (b)(1), (b)(2) introductory text, (b)(4); and (d);

■ c. Removing paragraph (b)(5); and

■ d. Redesignating paragraph (b)(6) as (b)(5).

The revisions read as follows:

§ 61.77 Special purpose pilot authorization: Operation of a civil aircraft of the United States and leased by a non-U.S. citizen.

(a) * * *

(2) For carrying persons or property for compensation or hire for operations in—

(i) Scheduled international air services in turbojet-powered airplanes of U.S. registry;

(ii) Scheduled international air services in airplanes of U.S. registry having a configuration of more than nine passenger seats, excluding crewmember seats;

(iii) Nonscheduled international air transportation in airplanes of U.S. registry having a configuration of more than 30 passenger seats, excluding crewmember seats; or

(iv) Scheduled international air services, or nonscheduled international air transportation, in airplanes of U.S. registry having a payload capacity of more than 7,500 pounds.

(b) * * *

(1) A foreign pilot license issued by the aeronautical authority of a contracting State to the Convention on International Civil Aviation that contains the appropriate aircraft category, class, type rating, if appropriate, and instrument rating for the aircraft to be flown;

(2) A certification by the lessee of the aircraft—

* * * * *

(4) Documentation the applicant meets the medical standards for the issuance of the foreign pilot license from the aeronautical authority of that contracting State to the Convention on International Civil Aviation; and

* * * * *

(d) *General limitations.* A special purpose pilot authorization may be used only—

(1) For flights between foreign countries or for flights in foreign air commerce within the time period allotted on the authorization.

(2) If the foreign pilot license required by paragraph (b)(1) of this section, the medical documentation required by paragraph (b)(4) of this section, and the special purpose pilot authorization issued under this section are in the holder's physical possession or immediately accessible in the aircraft.

(3) While the holder is employed by the person to whom the aircraft described in the certification required by paragraph (b)(2) of this section is leased.

(4) While the holder is performing pilot duties on the U.S.-registered aircraft described in the certification required by paragraph (b)(2) of this section.

(5) If the holder has only one special purpose pilot authorization as provided in paragraph (b)(5) of this section.

* * * * *

■ 27. Amend § 61.87 by revising paragraph (p) to read as follows:

§ 61.87 Solo requirements for student pilots.

* * * * *

(p) *Limitations on flight instructors authorizing solo flight.* No instructor may authorize a student pilot to perform a solo flight unless that instructor has—

(1) Given that student pilot training in the make and model of aircraft or a similar make and model of aircraft in which the solo flight is to be flown;

(2) Determined the student pilot is proficient in the maneuvers and procedures prescribed in this section;

(3) Determined the student pilot is proficient in the make and model of aircraft to be flown;

(4) Ensured that the student pilot's certificate has been endorsed by an instructor authorized to provide flight training for the specific make and model aircraft to be flown; and

(5) Endorsed the student pilot's logbook for the specific make and model aircraft to be flown, and that endorsement remains current for solo flight privileges, provided an authorized instructor updates the student's logbook every 90 days thereafter.

■ 28. Amend § 61.93 by revising paragraphs (b)(1)(iii), (b)(2)(iii), and (b)(2)(iv) to read as follows:

§ 61.93 Solo cross country flight requirements.

* * * * *

(b) * * *

(1) * * *

(iii) The student pilot has a solo flight endorsement in accordance with § 61.87 of this part;

* * * * *

(2) * * *

(iii) The student has a solo flight endorsement in accordance with § 61.87 of this part; and

(iv) The student has a solo cross country flight endorsement in accordance with paragraph (c) of this section; however, for repeated solo cross country flights to another airport within 50 nautical miles from which the flight originated, separate endorsements are not required to be made for each flight.

* * * * *

■ 29. Amend § 61.96 by revising paragraphs (b)(7) and (b)(8); and adding a new paragraph (b)(9) to read as follows:

§ 61.96 Applicability and eligibility requirements: General.

* * * * *

(b) * * *

(7) Pass the practical test on the areas of operation listed in § 61.98(b) that apply to the aircraft category and class rating;

(8) Comply with the sections of this part that apply to the aircraft category and class rating; and

(9) Hold either a student pilot certificate or sport pilot certificate.

■ 30. Amend § 61.101 by revising paragraphs (b) introductory text, (c) introductory text, (d) introductory text, (e)(1)(iii), and (j) introductory text to read as follows:

§ 61.101 Recreational pilot privileges and limitations.

* * * * *

(b) A person who holds a recreational pilot certificate may act as pilot in command of an aircraft on a flight within 50 nautical miles from the departure airport, provided that person has—

* * * * *

(c) A person who holds a recreational pilot certificate may act as pilot in command of an aircraft on a flight that exceeds 50 nautical miles from the departure airport, provided that person has—

* * * * *

(d) A person who holds a recreational pilot certificate may act as pilot in command of an aircraft in Class B, C, and D airspace, at an airport located in Class B, C, or D airspace, and to, from, through, or at an airport having an operational control tower, provided that person has—

* * * * *

(e) * * *

(1) * * *

(iii) With a powerplant of more than 180 horsepower, except aircraft certificated in the rotorcraft category; or

* * * * *

(j) In order to fly solo as provided in paragraph (i) of this section, the recreational pilot must meet the appropriate aeronautical knowledge and flight training requirements of § 61.87 for that aircraft. When operating an aircraft under the conditions specified in paragraph (i) of this section, the recreational pilot shall carry the logbook that has been endorsed for each flight by an authorized instructor who:

* * * * *

■ 31. Amend § 61.103 by adding new paragraph (j) to read as follows:

§ 61.103 Eligibility requirements: General.

* * *

(j) Hold a U.S. student pilot certificate, sport pilot certificate, or recreational pilot certificate.

■ 32. Amend § 61.109 by revising paragraphs (a)(5)(ii), (b)(5)(ii), (c)(4)(ii), (d)(4)(ii), and (e)(5)(ii) to read as follows:

§ 61.109 Aeronautical experience.

(a) * * *

(5) * * *

(ii) One solo cross country flight of 150 nautical miles total distance, with full-stop landings at three points, and one segment of the flight consisting of a straight-line distance of more than 50 nautical miles between the takeoff and landing locations; and

* * * * *

(b) * * *

(5) * * *

(ii) One solo cross country flight of 150 nautical miles total distance, with full-stop landings at three points, and one segment of the flight consisting of a straight-line distance of more than 50 nautical miles between the takeoff and landing locations; and

* * * * *

(c) * * *

(4) * * *

(ii) One solo cross country flight of 100 nautical miles total distance, with landings at three points, and one segment of the flight being a straight-line distance of more than 25 nautical miles between the takeoff and landing locations; and

* * * * *

(d) * * *

(4) * * *

(ii) One solo cross country flight of 100 nautical miles total distance, with landings at three points, and one segment of the flight being a straight-line distance of more than 25 nautical miles between the takeoff and landing locations; and

* * * * *

(e) * * *

(5) * * *

(ii) One solo cross country flight of 150 nautical miles total distance, with full-stop landings at three points, and one segment of the flight consisting of a straight-line distance of more than 50 nautical miles between the takeoff and landing locations; and

* * * * *

■ 33. Amend § 61.127 by:

■ a. Redesignating paragraphs (b)(4)(vi) through (ix) as (b)(4)(vii) through (x);

■ b. Adding a new paragraph (b)(4)(vi);

■ c. Removing paragraph (b)(5)(vii); and

■ d. Redesignating existing paragraphs (b)(5)(viii) through (xiii) as (b)(5)(vii) through (xii).

The addition reads as follows:

§ 61.127 Flight proficiency.

* * * * *

(b) * * *

(4) * * *

(vi) Ground reference maneuvers;

* * * * *

■ 34. Amend § 61.129 by revising paragraphs (a)(3)(i), (a)(3)(iii), (a)(3)(iv), (a)(4) introductory text, (b)(3)(i), (b)(3)(iii), (b)(3)(iv), (c)(3)(i) through (iii), (c)(4) introductory text, (d)(3)(i) through (iii), (d)(4) introductory text, (e)(3)(i) through (iii), (e)(4) introductory text, (g)(2) introductory text, (g)(3), (g)(4)(ii), (g)(4)(iii), and (i)(3) to read as follows:

§ 61.129 Aeronautical experience.

(a) * * *

(3) * * *

(i) Ten hours of instrument training using a view-limiting device including attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems. Five hours of the 10 hours required on instrument training must be in a single engine airplane;

* * * * *

(iii) One 2-hour cross country flight in a single engine airplane in daytime conditions that consists of a total straight-line distance of more than 100 nautical miles from the original point of departure;

(iv) One 2-hour cross country flight in a single engine airplane in nighttime conditions that consists of a total

straight-line distance of more than 100 nautical miles from the original point of departure; and

* * * * *

(4) Ten hours of solo flight time in a single engine airplane or 10 hours of flight time performing the duties of pilot in command in a single engine airplane with an authorized instructor on board (either of which may be credited towards the flight time requirement under paragraph (a)(2) of this section), on the areas of operation listed under § 61.127(b)(1) that include—

* * * * *

(b) * * *

(3) * * *

(i) Ten hours of instrument training using a view-limiting device including attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems. Five hours of the 10 hours required on instrument training must be in a multiengine airplane;

* * * * *

(iii) One 2-hour cross country flight in a multiengine airplane in daytime conditions that consists of a total straight-line distance of more than 100 nautical miles from the original point of departure;

(iv) One 2-hour cross country flight in a multiengine airplane in nighttime conditions that consists of a total straight-line distance of more than 100 nautical miles from the original point of departure; and

* * * * *

(c) * * *

(3) * * *

(i) Five hours on the control and maneuvering of a helicopter solely by reference to instruments using a view-limiting device including attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems. This aeronautical experience may be performed in an aircraft, flight simulator, flight training device, or an aviation training device;

(ii) One 2-hour cross country flight in a helicopter in daytime conditions that consists of a total straight-line distance of more than 50 nautical miles from the original point of departure;

(iii) One 2-hour cross country flight in a helicopter in nighttime conditions that consists of a total straight-line distance of more than 50 nautical miles from the original point of departure; and

* * * * *

(4) Ten hours of solo flight time in a helicopter or 10 hours of flight time performing the duties of pilot in command in a helicopter with an authorized instructor on board (either of which may be credited towards the flight time requirement under paragraph (c)(2) of this section), on the areas of operation listed under § 61.127(b)(3) that includes—

* * * * *

(d) * * *

(3) * * *

(i) 2.5 hours on the control and maneuvering of a gyroplane solely by reference to instruments using a view-limiting device including attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems. This aeronautical experience may be performed in an aircraft, flight simulator, flight training device, or an aviation training device;

(ii) One 2-hour cross country flight in a gyroplane in daytime conditions that consists of a total straight-line distance of more than 50 nautical miles from the original point of departure;

(iii) Two hours of flight training during nighttime conditions in a gyroplane at an airport, that includes 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern); and

* * * * *

(4) Ten hours of solo flight time in a gyroplane or 10 hours of flight time performing the duties of pilot in command in a gyroplane with an authorized instructor on board (either of which may be credited towards the flight time requirement under paragraph (d)(2) of this section), on the areas of operation listed in § 61.127(b)(4) that includes—

* * * * *

(e) * * *

(3) * * *

(i) Ten hours of instrument training using a view-limiting device including attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems. Five hours of the 10 hours required on instrument training must be in a powered-lift;

(ii) One 2-hour cross country flight in a powered-lift in daytime conditions that consists of a total straight-line distance of more than 100 nautical miles from the original point of departure;

(iii) One 2-hour cross country flight in a powered-lift in nighttime conditions that consists of a total straight-line distance of more than 100 nautical miles from the original point of departure; and

* * * * *

(4) Ten hours of solo flight time in a powered-lift or 10 hours of flight time performing the duties of pilot in command in a powered-lift with an authorized instructor on board (either of which may be credited towards the flight time requirement under paragraph (e)(2) of this section), on the areas of operation listed in § 61.127(b)(5) that includes—

* * * * *

(g) * * *

(2) Thirty hours of pilot in command flight time in airships or performing the duties of pilot in command in an airship with an authorized instructor aboard, which consists of—

* * * * *

(3) Forty hours of instrument time to include—

(i) Instrument training using a view-limiting device for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems; and

(ii) Twenty hours of instrument flight time, of which 10 hours must be in flight in airships.

(4) * * *

(ii) One hour cross country flight in an airship in daytime conditions that consists of a total straight-line distance of more than 25 nautical miles from the point of departure; and

(iii) One hour cross country flight in an airship in nighttime conditions that consists of a total straight-line distance of more than 25 nautical miles from the point of departure.

* * * * *

(i) * * *

(3) Except when fewer hours are approved by the FAA, an applicant for the commercial pilot certificate with the airplane or powered-lift rating who has completed 190 hours of aeronautical experience is considered to have met the total aeronautical experience requirements of this section, provided the applicant satisfactorily completed an approved commercial pilot course under part 142 of this chapter and the approved course was appropriate to the commercial pilot certificate and aircraft rating sought.

■ 35. Amend § 61.153 by revising paragraphs (d)(1), (d)(3), and (h) to read as follows:

§ 61.153 Eligibility requirements: General.

* * * * *

(d) * * *

(1) Holds a commercial pilot certificate with an instrument rating issued under this part;

* * * * *

(3) Holds either a foreign airline transport pilot license with instrument privileges, or a foreign commercial pilot license with an instrument rating, that—

(i) Was issued by a contracting State to the Convention on International Civil Aviation; and

(ii) Contains no geographical limitations.

* * * * *

(h) Comply with the sections of this subpart that apply to the aircraft category and class rating sought.

■ 36. Revise § 61.157 to read as follows:

§ 61.157 Flight proficiency.

(a) *General.* (1) The practical test for an airline transport pilot certificate is given for—

(i) An airplane category and single engine class rating.

(ii) An airplane category and multiengine class rating.

(iii) A rotorcraft category and helicopter class rating.

(iv) A powered-lift category rating.

(v) An aircraft type rating.

(2) A person who is applying for an airline transport pilot practical test must meet—

(i) The eligibility requirements of § 61.153; and

(ii) The aeronautical knowledge and aeronautical experience requirements of this subpart that apply to the aircraft category and class rating sought.

(b) *Aircraft type rating.* Except as provided in paragraph (c) of this section, a person who applies for an aircraft type rating to be added to an airline transport pilot certificate or applies for a type rating to be concurrently completed with an airline transport pilot certificate:

(1) Must receive and log ground and flight training from an authorized instructor on the areas of operation under this section that apply to the aircraft type rating;

(2) Must receive a logbook endorsement from an authorized instructor that certifies the applicant completed the training on the areas of operation listed under paragraph (e) of this section that apply to the aircraft type rating; and

(3) Must perform the practical test in actual or simulated instrument conditions, except as provided under paragraph (g) of this section.

(c) *Exceptions.* A person who applies for an aircraft type rating to be added to an airline transport pilot certificate or an aircraft type rating concurrently with an airline transport pilot certificate, and who is an employee of a certificate holder operating under part 121 or part 135 of this chapter, does not need to comply with the requirements of paragraph (b) of this section if the applicant presents a training record that shows completion of that certificate holder's approved pilot in command training program for the aircraft type rating.

(d) *Upgrading type ratings.* Any type rating(s) and limitations on a pilot certificate of an applicant who completes an airline transport pilot practical test will be included at the airline transport pilot certification level, provided the applicant passes the practical test in the same category and class of aircraft for which the applicant holds the type rating(s).

(e) *Areas of operation.* (1) For an airplane category—single engine class rating:

(i) Preflight preparation;

(ii) Preflight procedures;

(iii) Takeoff and departure phase;

(iv) In-flight maneuvers;

(v) Instrument procedures;

(vi) Landings and approaches to landings;

(vii) Normal and abnormal procedures;

(viii) Emergency procedures; and

(ix) Postflight procedures.

(2) For an airplane category—multiengine class rating:

(i) Preflight preparation;

(ii) Preflight procedures;

(iii) Takeoff and departure phase;

(iv) In-flight maneuvers;

(v) Instrument procedures;

(vi) Landings and approaches to landings;

(vii) Normal and abnormal procedures;

(viii) Emergency procedures; and

(ix) Postflight procedures.

(3) For a powered-lift category rating:

(i) Preflight preparation;

(ii) Preflight procedures;

(iii) Takeoff and departure phase;

(iv) In-flight maneuvers;

(v) Instrument procedures;

(vi) Landings and approaches to landings;

(vii) Normal and abnormal procedures;

(viii) Emergency procedures; and

(ix) Postflight procedures.

(4) For a rotorcraft category—helicopter class rating:

(i) Preflight preparation;

(ii) Preflight procedures;

(iii) Takeoff and departure phase;

(iv) In-flight maneuvers;

(v) Instrument procedures;

(vi) Landings and approaches to landings;

(vii) Normal and abnormal procedures;

(viii) Emergency procedures; and

(ix) Postflight procedures.

(f) *Proficiency and competency checks conducted under part 121, part 135, or subpart K of part 91.* (1) Successful completion of any of the following checks satisfies the flight proficiency requirements of this section for the issuance of an airline transport pilot certificate and/or the appropriate aircraft rating:

(i) A proficiency check under § 121.441 of this chapter.

(ii) Both a competency check under § 135.293(a)(2) and § 135.293(b) of this chapter and pilot-in-command instrument proficiency check under § 135.297 of this chapter.

(iii) Both a competency check under § 91.1065 of this chapter and a pilot-in-command instrument proficiency check under § 91.1069 of this chapter.

(2) The checks specified in paragraph (f)(1) of this section must be conducted by one of the following:

(i) An FAA Aviation Safety Inspector.

(ii) An Aircrew Program Designee who is authorized to perform proficiency checks for the air carrier whose approved training program has been satisfactorily completed by the pilot applicant.

(iii) A Training Center Evaluator who is also authorized to perform the portions of the competency and proficiency checks required by paragraph (f)(1) of this section for the air carrier whose approved training program has been satisfactorily completed by the pilot applicant.

(g) *Aircraft not capable of instrument maneuvers and procedures.* An applicant may add a type rating to an airline transport pilot certificate with an aircraft that is not capable of the instrument maneuvers and procedures required on the practical test under the following circumstances—

(1) The rating is limited to ''VFR only.''

(2) The type rating is added to an airline transport pilot certificate that has instrument privileges in that category and class of aircraft.

(3) The ''VFR only'' limitation may be removed for that aircraft type after the applicant:

(i) Passes a practical test in that type of aircraft on the appropriate instrument maneuvers and procedures in § 61.157; or

(ii) Becomes qualified in § 61.73(d) for that type of aircraft.

(h) *Multiengine airplane with a single-pilot station.* An applicant for a type rating, at the ATP certification level, in a multiengine airplane with a single-pilot station must perform the practical test in the multi-seat version of that airplane. The practical test may be performed in the single-seat version of that airplane if the Examiner is in a position to observe the applicant during the practical test in the case where there

is no multi-seat version of that multiengine airplane.

(i) *Single engine airplane with a single-pilot station.* An applicant for a type rating, at the ATP certification level, in a single engine airplane with a single-pilot station must perform the practical test in the multi-seat version of that single engine airplane. The practical test may be performed in the single-seat version of that airplane if the Examiner is in a position to observe the applicant during the practical test in the case where there is no multi-seat version of that single engine airplane.

(j) *Waiver authority.* An Examiner who conducts a practical test may waive any task for which the FAA has provided waiver authority.

■ 37. Amend § 61.159 by adding a new paragraph (c)(3); and revising paragraphs (d) and (e) to read as follows:

§ 61.159 Aeronautical experience: Airplane category rating.

* * * * *

(c) * * *

(3) Flight-engineer time, provided the flight time—

(i) Is acquired as a U.S. Armed Forces' flight engineer crewmember in an airplane that requires a flight engineer crewmember by the flight manual;

(ii) Is acquired while the person is participating in a flight engineer crewmember training program for the U.S. Armed Forces; and

(iii) Does not exceed 1 hour for each 3 hours of flight engineer flight time for a total credited time of no more than 500 hours.

(d) An applicant is issued an airline transport pilot certificate with the limitation, ''Holder does not meet the pilot in command aeronautical experience requirements of ICAO,'' as prescribed under Article 39 of the Convention on International Civil Aviation, if the applicant does not meet the ICAO requirements contained in Annex 1 ''Personnel Licensing'' to the Convention on International Civil Aviation, but otherwise meets the aeronautical experience requirements of this section.

(e) An applicant is entitled to an airline transport pilot certificate without the ICAO limitation specified under paragraph (d) of this section when the applicant presents satisfactory evidence of having met the ICAO requirements under paragraph (d) of this section and otherwise meets the aeronautical experience requirements of this section.

■ 38. Amend § 61.167 by revising paragraphs (a) and (b)(3) to read as follows:

§ 61.167 Privileges.

(a) A person who holds an airline transport pilot certificate is entitled to the same privileges as a person who holds a commercial pilot certificate with an instrument rating.

(b) * * *

(3) Only as provided in this section, except that an airline transport pilot who also holds a flight instructor certificate can exercise the instructor privileges under subpart H of this part for which he or she is rated; and

* * * * *

■ 39. Amend § 61.183 by revising paragraph (e)(2) to read as follows:

§ 61.183 Eligibility requirements.

* * * * *

(e) * * *

(2) Holds a teacher's certificate issued by a State, county, city, or municipality that authorizes the person to teach at an educational level of the 7th grade or higher; or

* * * * *

■ 40. Amend § 61.187 by revising paragraph (b)(6)(vii) to read as follows:

§ 61.187 Flight proficiency.

* * * * *

(b) * * *

(6) * * *

(vii) Launches and landings;

* * * * *

■ 41. Amend § 61.193 by revising the introductory text to read as follows:

§ 61.193 Flight instructor privileges.

A person who holds a flight instructor certificate is authorized within the limitations of that person's flight instructor certificate and ratings to train and issue endorsements that are required for:

* * * * *

■ 42. Amend § 61.195 by revising paragraphs (b), (c), (d)(3) introductory text, (h)(1)(i), (h)(1)(ii), and (h)(3) introductory text, and adding a new paragraph (k) to read as follows:

§ 61.195 Flight instructor limitations and qualifications.

* * * * *

(b) *Aircraft Ratings.* A flight instructor may not conduct flight training in any aircraft for which the flight instructor does not hold:

(1) A pilot certificate and flight instructor certificate with the applicable category and class rating; and

(2) If appropriate, a type rating.

(c) *Instrument Rating.* A flight instructor who provides instrument training for the issuance of an instrument rating, a type rating not limited to VFR, or the instrument training required for commercial pilot and airline transport pilot certificates must hold an instrument rating on his or her pilot certificate and flight instructor certificate that is appropriate to the category and class of aircraft used for the training provided.

(d) * * *

(3) Student pilot's logbook for solo flight in a Class B airspace area or at an airport within Class B airspace unless that flight instructor has—

* * * * *

(h) * * *

(1) * * *

(i) Holds a ground or flight instructor certificate with the appropriate rating, has held that certificate for at least 24 calendar months, and has given at least 40 hours of ground training; or

(ii) Holds a ground or flight instructor certificate with the appropriate rating, and has given at least 100 hours of ground training in an FAA-approved course.

* * * * *

(3) A flight instructor who serves as a flight instructor in an FAA-approved course for the issuance of a flight instructor rating must hold a flight instructor certificate with the appropriate rating and pass the required initial and recurrent flight instructor proficiency tests, in accordance with the requirements of the part under which the FAA-approved course is conducted, and must—

* * * * *

(k) *Training for night vision goggle operations.* A flight instructor may not conduct training for night vision goggle operations unless the flight instructor:

(1) Has a pilot and flight instructor certificate with the applicable category and class rating for the training;

(2) If appropriate, has a type rating on his or her pilot certificate for the aircraft;

(3) Is pilot in command qualified for night vision goggle operations, in accordance with § 61.31(k);

(4) Has logged 100 night vision goggle operations as the sole manipulator of the controls;

(5) Has logged 20 night vision goggle operations as the sole manipulator of the controls in the category and class, and type of aircraft, if aircraft class and type is appropriate, that the training will be given in;

(6) Is qualified to act as pilot in command in night vision goggle operations under § 61.57(f) or (g); and

(7) Has a logbook endorsement from an FAA Aviation Safety Inspector or a person who is authorized by the FAA to provide that logbook endorsement that states the flight instructor is authorized

to perform the night vision goggle pilot in command qualification and recent flight experience requirements under § 61.31(k) and § 61.57(f) and (g).

■ 43. Amend § 61.197 by revising the section heading, paragraph (a) introductory text and paragraph (a)(2) to read as follows:

§ 61.197 Renewal requirements for flight instructor certification.

(a) A person who holds a flight instructor certificate that has not expired may renew that flight instructor certificate by—

* * * * *

(2) Submitting a completed and signed application with the FAA and satisfactorily completing one of the following renewal requirements—

(i) A record of training students showing that, during the preceding 24 calendar months, the flight instructor has endorsed at least 5 students for a practical test for a certificate or rating and at least 80 percent of those students passed that test on the first attempt.

(ii) A record showing that, within the preceding 24 calendar months, the flight instructor has served as a company check pilot, chief flight instructor, company check airman, or flight instructor in a part 121 or part 135 operation, or in a position involving the regular evaluation of pilots.

(iii) A graduation certificate showing that, within the preceding 3 calendar months, the person has successfully completed an approved flight instructor refresher course consisting of ground training or flight training, or a combination of both.

(iv) A record showing that, within the preceding 12 months from the month of application, the flight instructor passed an official U.S. Armed Forces military instructor pilot proficiency check.

* * * * *

■ 44. Amend § 61.199 by revising the section heading and paragraph (a) to read as follows:

§ 61.199 Reinstatement requirements of an expired flight instructor certificate.

(a) *Flight instructor certificates.* The holder of an expired flight instructor certificate who has not complied with the flight instructor renewal requirements of § 61.197 may reinstate that flight instructor certificate and ratings by filing a completed and signed application with the FAA and satisfactorily completing one of the following reinstatement requirements:

(1) A flight instructor certification practical test, as prescribed by § 61.183(h), for one of the ratings held on the expired flight instructor certificate.

(2) A flight instructor certification practical test for an additional rating.

* * * * *

■ 45. Amend § 61.213 by revising paragraph (b)(2) to read as follows:

§ 61.213 Eligibility requirements.

* * * * *

(b) * * *

(2) Holds a teacher's certificate issued by a State, county, city, or municipality that authorizes the person to teach at an educational level of the 7th grade or higher; or

* * * * *

■ 46. Amend § 61.215 by revising paragraphs (b)(1), (2), and (3) to read as follows:

§ 61.215 Ground instructor privileges.

* * * * *

(b) * * *

(1) Ground training on the aeronautical knowledge areas required for the issuance of any certificate or rating under this part except for the aeronautical knowledge areas required for an instrument rating.

(2) The ground training required for any flight review except for the training required for an instrument rating.

(3) A recommendation for a knowledge test required for the issuance of any certificate or rating under this part except for an instrument rating.

* * * * *

■ 47. Revise § 61.217 to read as follows:

§ 61.217 Recent experience requirements.

The holder of a ground instructor certificate may not perform the duties of a ground instructor unless the person can show that one of the following occurred during the preceding 12 calendar months:

(a) Employment or activity as a ground instructor giving pilot, flight instructor, or ground instructor training;

(b) Employment or activity as a flight instructor giving pilot, flight instructor, or ground instructor ground or flight training;

(c) Completion of an approved flight instructor refresher course and receipt of a graduation certificate for that course; or

(d) An endorsement from an authorized instructor certifying that the person has demonstrated knowledge in the subject areas prescribed under § 61.213(a)(3) and (a)(4), as appropriate.

■ 48. Amend § 61.303 by revising paragraph (a) introductory text and paragraph (b) introductory text to read as follows:

§ 61.303 If I want to operate a light-sport aircraft, what operating limits and endorsement requirements in this subpart must I comply with?

(a) Use the following table to determine what operating limits and endorsement requirements in this subpart, if any, apply to you when you operate a light-sport aircraft. The medical certificate specified in this table must be in compliance with § 61.2 in regards to currency and validity. If you hold a recreational pilot certificate, but not a medical certificate, you must comply with cross country requirements in § 61.101 (c), even if your flight does not exceed 50 nautical miles from your departure airport. You must also comply with requirements in other subparts of this part that apply to your certificate and the operation you conduct.

* * * * *

(b) A person using a U.S. driver's license to meet the requirements of this paragraph must—

* * * * *

■ 49. Amend § 61.403 by revising paragraph (c) to read as follows:

§ 61.403 What are the age, language, and pilot certificate requirements for a flight instructor certificate with a sport pilot rating?

* * * * *

(c) Hold at least a sport pilot certificate with category and class ratings or privileges, as applicable, that are appropriate to the flight instructor privileges sought.

■ 50. Amend § 61.407 by revising paragraph (c)(2) to read as follows:

§ 61.407 What aeronautical knowledge must I have to apply for a flight instructor certificate with a sport pilot rating?

* * * * *

(c) * * *

(2) Hold a teacher's certificate issued by a State, county, city, or municipality; or

* * * * *

■ 51. Amend § 61.429 by revising the introductory text to read as follows:

§ 61.429 May I exercise the privileges of a flight instructor certificate with a sport pilot rating if I hold a flight instructor certificate with another rating?

If you hold a flight instructor certificate, a commercial pilot certificate with an airship rating, or a commercial pilot certificate with a balloon rating issued under this part, and you seek to exercise the privileges of a flight instructor certificate with a sport pilot rating, you may do so without any further showing of proficiency, subject to the following limits:

* * * * *

■ 52. Amend § 61.431 by revising paragraph (a) to read as follows:

§ 61.431 Are there special provisions for obtaining a flight instructor certificate with a sport pilot rating for persons who are registered ultralight instructors with an FAA-recognized ultralight organization?

* * * * *

(a) You must hold either a sport pilot certificate or recreational pilot certificate and meet the requirements § 61.101(c), or hold at least a private pilot certificate issued under this part.

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 53. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

■ 54. Amend § 91.205 by redesignating existing paragraph (h) as paragraph (i); and adding a new paragraph (h) to read as follows:

§ 91.205 Powered civil aircraft with standard category U.S. airworthiness certificates; Instrument and equipment requirements.

* * * * *

(h) *Night vision goggle operations.* For night vision goggle operations, the following instruments and equipment must be installed in the aircraft, functioning in a normal manner, and approved for use by the FAA:

(1) Instruments and equipment specified in paragraph (b) of this section, instruments and equipment specified in paragraph (c) of this section;

(2) Night vision goggles;

(3) Interior and exterior aircraft lighting system required for night vision goggle operations;

(4) Two-way radio communications system;

(5) Gyroscopic pitch and bank indicator (artificial horizon);

(6) Generator or alternator of adequate capacity for the required instruments and equipment; and

(7) Radar altimeter.

* * * * *

PART 141—PILOT SCHOOLS

■ 55. The authority citation for 14 CFR part 141 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709, 44711, 45102–45103, 45301–45302.

■ 56. Revise § 141.5 to read as follows:

§ 141.5 Requirements for a pilot school certificate.

The FAA may issue a pilot school certificate with the appropriate ratings if, within the 24 calendar months before the date application is made, the applicant—

(a) Completes the application for a pilot school certificate on the form and in the manner prescribed by the FAA;

(b) Has held a provisional pilot school certificate;

(c) Meets the applicable requirements under subparts A through C of this part for the school certificate and associated ratings sought;

(d) Has trained and recommended at least 10 different people for a knowledge test or a practical test, or any combination thereof, and at least 80 percent of those persons passed their tests on the first attempt; and

(e) Has graduated at least 10 different people from the school's approved training courses.

■ 57. Revise § 141.9 to read as follows:

§ 141.9 Examining authority.

The FAA issues examining authority to a pilot school for a training course if the pilot school and its training course meet the requirements of subpart D of this part.

■ 58. Amend § 141.33 by revising paragraph (d)(2) to read as follows:

§ 141.33 Personnel.

* * * * *

(d) * * *

(2) The school has an enrollment of at least 10 students at the time designation is sought.

* * * * *

■ 59. Revise § 141.39 to read as follows:

§ 141.39 Aircraft.

(a) When the school's training facility is located within the U.S., an applicant for a pilot school certificate or provisional pilot school certificate must show that each aircraft used by the school for flight training and solo flights:

(1) Is a civil aircraft of the United States;

(2) Is certificated with a standard or primary airworthiness certificate, unless the FAA determines otherwise because of the nature of the approved course;

(3) Is maintained and inspected in accordance with the requirements for aircraft operated for hire under part 91, subpart E, of this chapter;

(4) Has two pilot stations with engine-power controls that can be easily reached and operated in a normal manner from both pilot stations (for flight training); and

(5) Is equipped and maintained for IFR operations if used in a course involving IFR en route operations and instrument approaches. For training in the control and precision maneuvering of an aircraft by reference to instruments, the aircraft may be equipped as provided in the approved course of training.

(b) When the school's training facility is located outside the U.S. and the training will be conducted outside the U.S., an applicant for a pilot school certificate or provisional pilot school certificate must show that each aircraft used by the school for flight training and solo flights:

(1) Is either a civil aircraft of the United States or a civil aircraft of foreign registry;

(2) Is certificated with a standard or primary airworthiness certificate or an equivalent certification from the foreign aviation authority;

(3) Is maintained and inspected in accordance with the requirements for aircraft operated for hire under part 91, subpart E of this chapter, or in accordance with equivalent maintenance and inspection from the foreign aviation authority's requirements;

(4) Has two pilot stations with engine-power controls that can be easily reached and operated in a normal manner from both pilot stations (for flight training); and

(5) Is equipped and maintained for IFR operations if used in a course involving IFR en route operations and instrument approaches. For training in the control and precision maneuvering of an aircraft by reference to instruments, the aircraft may be equipped as provided in the approved course of training.

■ 60. Amend § 141.53 by revising paragraph (c) to read as follows:

§ 141.53 Approval procedures for a training course: General.

* * * * *

(c) *Training courses.* An applicant for a pilot school certificate or provisional pilot school certificate may request approval for the training courses specified under § 141.11(b).

■ 61. Amend § 141.55 by revising paragraphs (d) introductory text, (e) introductory text, and (e)(2)(ii) introductory text to read as follows:

§ 141.55 Training course: Contents.

* * * * *

(d) A pilot school may request and receive initial approval for a period of not more than 24 calendar months for any training course under this part that does not meet the minimum ground and

flight training time requirements, provided the following provisions are met:

* * * * *

(e) A pilot school may request and receive final approval for any training course under this part that does not meet the minimum ground and flight training time requirements, provided the following conditions are met:

* * * * *

(2) * * *

(ii) At least 80 percent of those students passed the practical or knowledge test, as appropriate, on the first attempt, and that test was given by—

* * * * *

■ 62. Amend § 141.77 by revising paragraph (c) to read as follows:

§ 141.77 Limitations.

* * * * *

(c) A student may be given credit towards the curriculum requirements of a course for previous training under the following conditions:

(1) If the student completed a proficiency test and knowledge test that was conducted by the receiving pilot school and the previous training was based on a part 141- or a part 142-approved flight training course, the credit is limited to not more than 50 percent of the flight training requirements of the curriculum.

(2) If the student completed a knowledge test that was conducted by the receiving pilot school and the previous training was based on a part 141- or a part 142-approved aeronautical knowledge training course, the credit is limited to not more than 50 percent of the aeronautical knowledge training requirements of the curriculum.

(3) If the student completed a proficiency test and knowledge test that was conducted by the receiving pilot school and the training was received from other than a part 141- or a part 142-approved flight training course, the credit is limited to not more than 25 percent of the flight training requirements of the curriculum.

(4) If the student completed a knowledge test that was conducted by the receiving pilot school and the previous training was received from other than a part 141- or a part 142-approved aeronautical knowledge training course, the credit is limited to not more than 25 percent of the aeronautical knowledge training requirements of the curriculum.

(5) Completion of previous training must be certified in the student's training record by the training provider or a management official within the training provider's organization, and must contain—

(i) The kind and amount of training provided; and

(ii) The result of each stage check and end-of-course test, if appropriate.

■ 63. Amend § 141.85 by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 141.85 Chief instructor responsibilities.

(a) A chief instructor designated for a pilot school or provisional pilot school is responsible for:

(1) Certifying each student's training record, graduation certificate, stage check and end-of-course test reports, and recommendation for course completion, unless the duties are delegated by the chief instructor to an assistant chief instructor or recommending instructor;

* * * * *

■ 64. Amend appendix B to part 141 by revising paragraph 2; paragraphs 4.(b)(1)(iii), 4.(b)(2)(iii), and 4.(b)(5)(iii); and 5.(a)(1), 5.(b)(1), 5.(c)(1), 5.(d)(1), and 5.(e)(1) to read as follows:

Appendix B to Part 141—Private Pilot Certification Course

* * * * *

2. *Eligibility for enrollment.* A person must hold either a recreational pilot certificate, sport pilot certificate, or student pilot certificate before enrolling in the solo flight phase of the private pilot certification course.

* * * * *

4. * * *

(b) * * *

(1) * * *

(iii) Three hours of flight training in a single engine airplane on the control and maneuvering of a single engine airplane solely by reference to instruments, including straight and level flight, constant airspeed climbs and descents, turns to a heading, recovery from unusual flight attitudes, radio communications, and the use of navigation systems/facilities and radar services appropriate to instrument flight; and

* * * * *

(2) * * *

(iii) Three hours of flight training in a multiengine airplane on the control and maneuvering of a multiengine airplane solely by reference to instruments, including straight and level flight, constant airspeed climbs and descents, turns to a heading, recovery from unusual flight attitudes, radio communications, and the use of navigation systems/facilities and radar services appropriate to instrument flight; and

* * * * *

(5) * * *

(iii) Three hours of flight training in a powered-lift on the control and maneuvering of a powered-lift solely by reference to instruments, including straight and level flight, constant airspeed climbs and descents, turns to a heading, recovery from unusual flight attitudes, radio communications, and the use of navigation systems/facilities and radar services appropriate to instrument flight; and

* * * * *

5. * * *

(a) * * *

(1) One solo 100 nautical miles cross country flight with landings at a minimum of three points and one segment of the flight consisting of a straight-line distance of more than 50 nautical miles between the takeoff and landing locations; and

* * * * *

(b) * * *

(1) One 100 nautical miles cross country flight with landings at a minimum of three points and one segment of the flight consisting of a straight-line distance of more than 50 nautical miles between the takeoff and landing locations; and

* * * * *

(c) * * *

(1) One solo 100 nautical miles cross country flight with landings at a minimum of three points and one segment of the flight consisting of a straight-line distance of more than 25 nautical miles between the takeoff and landing locations; and

* * * * *

(d) * * *

(1) One solo 100 nautical miles cross country flight with landings at a minimum of three points and one segment of the flight consisting of a straight-line distance of more than 25 nautical miles between the takeoff and landing locations; and

* * * * *

(e) * * *

(1) One solo 100 nautical miles cross country flight with landings at a minimum of three points and one segment of the flight consisting of a straight-line distance of more than 50 nautical miles between the takeoff and landing locations; and

* * * * *

■ 65. Amend appendix C to part 141 by revising paragraphs 4.(b)(2) through 4.(b)(4); adding new paragraphs 4.(b)(5) and (6); and revising the introductory text of paragraph 4.(d) to read as follows:

Appendix C to Part 141—Instrument Rating Course

* * * * *

4. * * *

(b) * * *

(2) Credit for training in a flight simulator that meets the requirements of § 141.41(a) cannot exceed 50 percent of the total flight training hour requirements of the course or of this section, whichever is less.

(3) Credit for training in a flight training device that meets the requirements of § 141.41(b) cannot exceed 40 percent of the total flight training hour requirements of the course or of this section, whichever is less.

(4) Credit for training in flight simulators and flight training devices, if used in combination, cannot exceed 50 percent of the total flight training hour requirements of the course or of this section, whichever is less. However, credit for training in a flight

training device cannot exceed the limitation provided for in paragraph (b)(3) of this section.

(5) Credit for training in an approved aviation training device cannot exceed 10 percent of the total flight training hour requirements of the course or of this section, whichever is less.

(6) Credit for training in flight simulators, flight training devices, and aviation training devices, if used in combination, cannot exceed 50 percent of the total flight training hour requirements of the course or of this section, whichever is less. However, credit for training in an aviation training device cannot exceed the limitation provided under paragraph (b)(5) of this section.

* * * * *

(d) Each course must include flight training on the areas of operation listed under this paragraph appropriate to the instrument aircraft category and class rating (if a class rating is appropriate) for which the course applies:

* * * * *

■ 66. Amend appendix D to part 141 by:

■ a. Revising paragraphs 4.(b)(1)(i) through (iv);

■ b. Revising paragraphs 4.(b)(2)(i), (iii), and (iv);

■ c. Revising paragraphs 4.(b)(3)(i) through (iii);

■ d. Revising paragraphs 4.(b)(4)(i) through (iii), 4.(b)(5)(i) through (iii);

■ e. Revising paragraphs 4.(b)(7)(i) through (iii);

■ f. Redesignating paragraphs 4.(d)(4)(vi) through (ix) as 4.(d)(4)(vii) through (x);

■ g. Adding a new paragraph 4.(d)(4)(vi); and

■ h. Revising the introductory text of paragraphs 5.(a), (b), (c), (d), and (e).

The revisions and addtion read as follows:

Appendix D to Part 141—Commercial Pilot Certification Course

* * * * *

4. * * *

(b) * * *

(1) * * *

(i) Ten hours of instrument training using a view-limiting device including attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems. Five hours of the 10 hours required on instrument training must be in a single engine airplane;

(ii) Ten hours of training in an airplane that has a retractable landing gear, flaps, and a controllable pitch propeller, or is turbine-powered;

(iii) One 2-hour cross country flight in daytime conditions in a single engine airplane that consists of a total straight-line distance of more than 100 nautical miles from the original point of departure;

(iv) One 2-hour cross country flight in nighttime conditions in a single engine airplane that consists of a total straight-line distance of more than 100 nautical miles from the original point of departure; and

* * * * *

(2) * * *

(i) Ten hours of instrument training using a view-limiting device including attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems. Five hours of the 10 hours required on instrument training must be in a multiengine airplane;

* * * * *

(iii) One 2-hour cross country flight in daytime conditions in a multiengine airplane that consists of a total straight-line distance of more than 100 nautical miles from the original point of departure;

(iv) One 2-hour cross country flight in nighttime conditions in a multiengine airplane that consists of a total straight-line distance of more than 100 nautical miles from the original point of departure; and

* * * * *

(3) * * *

(i) Five hours on the control and maneuvering of a helicopter solely by reference to instruments, including using a view-limiting device for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems. This aeronautical experience may be performed in an aircraft, flight simulator, flight training device, or an aviation training device;

(ii) One 2-hour cross country flight in daytime conditions in a helicopter that consists of a total straight-line distance of more than 50 nautical miles from the original point of departure;

(iii) One 2-hour cross country flight in nighttime conditions in a helicopter that consists of a total straight-line distance of more than 50 nautical miles from the original point of departure; and

* * * * *

(4) * * *

(i) 2.5 hours on the control and maneuvering of a gyroplane solely by reference to instruments, including using a view-limiting device for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems. This aeronautical experience may be performed in an aircraft, flight simulator, flight training device, or an aviation training device;

(ii) One 2-hour cross country flight in daytime conditions in a gyroplane that consists of a total straight-line distance of more than 50 nautical miles from the original point of departure;

(iii) Two hours of flight training in nighttime conditions in a gyroplane at an airport, that includes 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern); and

* * * * *

(5) * * *

(i) Ten hours of instrument training using a view-limiting device including attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems. Five hours of the 10 hours required on instrument training must be in a powered-lift;

(ii) One 2-hour cross country flight in daytime conditions in a powered-lift that consists of a total straight-line distance of more than 100 nautical miles from the original point of departure;

(iii) One 2-hour cross country flight in nighttime conditions in a powered-lift that consists of a total straight-line distance of more than 100 nautical miles from the original point of departure; and

* * * * *

(7) * * *

(i) Three hours of instrument training in an airship, including using a view-limiting device for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems;

(ii) One hour cross country flight in daytime conditions in an airship that consists of a total straight-line distance of more than 25 nautical miles from the original point of departure;

(iii) One hour cross country flight in nighttime conditions in an airship that consists of a total straight-line distance of more than 25 nautical miles from the original point of departure; and

* * * * *

(d) * * *

(4) * * *

(vi) Ground reference maneuvers;

* * * * *

5. * * *

(a) *For an airplane single engine course.* Ten hours of solo flight time in a single engine airplane, or 10 hours of flight time while performing the duties of pilot in command in a single engine airplane with an authorized instructor on board. The training must consist of the approved areas of operation under paragraph (d)(1) of section 4 of this appendix, and include—

* * * * *

(b) *For an airplane multiengine course.* Ten hours of solo flight time in a multiengine airplane, or 10 hours of flight time while performing the duties of pilot in command in a multiengine airplane with an authorized instructor on board. The training must consist of the approved areas of operation under paragraph (d)(2) of section 4 of this appendix, and include—

* * * * *

(c) *For a rotorcraft helicopter course.* Ten hours of solo flight time in a helicopter, or 10 hours of flight time while performing the duties of pilot in command in a helicopter with an authorized instructor on board. The training must consist of the approved areas of operation under paragraph (d)(3) of section 4 of this appendix, and include—

* * * * *

(d) *For a rotorcraft-gyroplane course.* Ten hours of solo flight time in a gyroplane, or 10 hours of flight time while performing the duties of pilot in command in a gyroplane with an authorized instructor on board. The training must consist of the approved areas of operation under paragraph (d)(4) of section 4 of this appendix, and include—

* * * * *

(e) *For a powered-lift course.* Ten hours of solo flight time in a powered-lift, or 10 hours of flight time while performing the duties of pilot in command in a powered-lift with an authorized instructor on board. The training must consist of the approved areas of operation under paragraph (d)(5) of section No. 4 of this appendix, and include—

* * * * *

■ 67. Amend appendix E to part 141 by:
■ a. Revising the introductory text of paragraph 2;
■ b. Removing paragraph 2.(a);
■ c. Redesignating paragraph 2.(b) as new paragraph (a);
■ d. Revising newly re-designated paragraph 2.(a); and
■ e. Redesignating existing paragraphs 2.(c) and (d) as paragraph 2(b) and (c).

The revisions read as follows:

Appendix E to Part 141—Airline Transport Pilot Certification Course

* * * * *

2. *Eligibility for enrollment.* Before completing the flight portion of the airline transport pilot certification course, a person must meet the aeronautical experience requirements for an airline transport pilot certificate under part 61, subpart G of this chapter that is appropriate to the aircraft category and class rating for which the course applies, and:

(a) Hold a commercial pilot certificate and an instrument rating, or an airline transport pilot certificate with instrument privileges;

* * * * *

■ 68. Amend appendix I to part 141 by revising the appendix heading; and revising paragraphs 3 and 4 to read as follows:

Appendix I to Part 141—Additional Aircraft Category and/or Class Rating Course

* * * * *

3. *Aeronautical knowledge training.*

(a) For a recreational pilot certificate, the following aeronautical knowledge areas must be included in a 10-hour ground training course for an additional aircraft category and/or class rating:

(1) Applicable regulations issued by the Federal Aviation Administration for recreational pilot privileges, limitations, and flight operations;

(2) Safe and efficient operation of aircraft, including collision avoidance, and recognition and avoidance of wake turbulence;

(3) Effects of density altitude on takeoff and climb performance;

(4) Weight and balance computations;

(5) Principles of aerodynamics, powerplants, and aircraft systems;

(6) Stall awareness, spin entry, spins, and spin recovery techniques if applying for an airplane single engine rating; and

(7) Preflight action that includes how to obtain information on runway lengths at airports of intended use, data on takeoff and landing distances, weather reports and forecasts, and fuel requirements.

(b) For a private pilot certificate, the following aeronautical knowledge areas must be included in a 10-hour ground training course for an additional class rating or a 15-hour ground training course for an additional aircraft category and class rating:

(1) Applicable regulations issued by the Federal Aviation Administration for private pilot privileges, limitations, and flight operations;

(2) Safe and efficient operation of aircraft, including collision avoidance, and recognition and avoidance of wake turbulence;

(3) Effects of density altitude on takeoff and climb performance;

(4) Weight and balance computations;

(5) Principles of aerodynamics, powerplants, and aircraft systems;

(6) Stall awareness, spin entry, spins, and spin recovery techniques if applying for an airplane single engine rating; and

(7) Preflight action that includes how to obtain information on runway lengths at airports of intended use, data on takeoff and landing distances, weather reports and forecasts, and fuel requirements.

(c) For a commercial pilot certificate, the following aeronautical knowledge areas must be included in a 15-hour ground training course for an additional class rating or a 20-hour ground training course for an additional aircraft category and class rating:

(1) Applicable regulations issued by the Federal Aviation Administration for commercial pilot privileges, limitations, and flight operations;

(2) Basic aerodynamics and the principles of flight;

(3) Safe and efficient operation of aircraft;

(4) Weight and balance computations;

(5) Use of performance charts;

(6) Significance and effects of exceeding aircraft performance limitations;

(7) Principles and functions of aircraft systems;

(8) Maneuvers, procedures, and emergency operations appropriate to the aircraft;

(9) Nighttime and high-altitude operations; and

(10) Procedures for flight and ground training for lighter-than-air ratings.

(d) For an airline transport pilot certificate, the following aeronautical knowledge areas must be included in a 25-hour ground training course for an additional aircraft category and/or class rating:

(1) Applicable regulations issued by the Federal Aviation Administration for airline transport pilot privileges, limitations, and flight operations;

(2) Meteorology, including knowledge and effects of fronts, frontal characteristics, cloud formations, icing, and upper-air data;

(3) General system of weather and NOTAM collection, dissemination, interpretation, and use;

(4) Interpretation and use of weather charts, maps, forecasts, sequence reports, abbreviations, and symbols;

(5) National Weather Service functions as they pertain to operations in the National Airspace System;

(6) Windshear and microburst awareness, identification, and avoidance;

(7) Principles of air navigation under instrument meteorological conditions in the National Airspace System;

(8) Air traffic control procedures and pilot responsibilities as they relate to en route operations, terminal area and radar operations, and instrument departure and approach procedures;

(9) Aircraft loading; weight and balance; use of charts, graphs, tables, formulas, and computations; and the effects on aircraft performance;

(10) Aerodynamics relating to an aircraft's flight characteristics and performance in normal and abnormal flight regimes;

(11) Human factors;

(12) Aeronautical decision making and judgment; and

(13) Crew resource management to include crew communication and coordination.

4. Flight training.

(a) Course for an additional airplane category and single engine class rating.

(1) For the recreational pilot certificate, the course must include 15 hours of flight training on the areas of operations under part 141, appendix A, paragraph 4(c)(1) that include—

(i) Two hours of flight training to an airport and at an airport that is located more than 25 nautical miles from the airport where the applicant normally trains, with three takeoffs and three landings, except as provided under § 61.100 of this chapter; and

(ii) Three hours of flight training in an aircraft with the airplane category and single engine class within 2 calendar months before the date of the practical test.

(2) For the private pilot certificate, the course must include 20 hours of flight training on the areas of operations under part 141, appendix B, paragraph 4(d)(1). A flight simulator and flight training device cannot be used to meet more than 4 hours of the training requirements, and the use of the flight training device is limited to 3 hours of the 4 hours permitted. The course must include—

(i) Three hours of cross country training in a single engine airplane, except as provided under § 61.111 of this chapter;

(ii) Three hours of nighttime flight training in a single engine airplane that includes one cross country flight of more than 100 nautical miles total distance, and 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport;

(iii) Three hours of flight training in a single engine airplane on the control and maneuvering of the airplane solely by reference to instruments, including straight and level flight, constant airspeed climbs and descents, turns to a heading, recovery from unusual flight attitudes, radio communications, and the use of navigation systems/facilities and radar services appropriate to instrument flight; and

(iv) Three hours of flight training in a single engine airplane within 2 calendar months before the date of the practical test.

(3) For the commercial pilot certificate, the course must include 55 hours of flight training on the areas of operations under part 141, appendix D, paragraph 4(d)(1). A flight simulator and flight training device cannot be

used to meet more than 16.5 hours of the training requirements, and the use of the flight training device is limited to 11 hours of the 16.5 hours permitted. The course must include—

(i) Five hours of instrument training in a single engine airplane that includes training using a view-limiting device on attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems;

(ii) Ten hours of training in an airplane that has retractable landing gear, flaps, and a controllable pitch propeller, or is turbine-powered;

(iii) One 2-hour cross country flight during daytime conditions in a single engine airplane, a total straight-line distance of more than 100 nautical miles from the original point of departure;

(iv) One 2-hour cross country flight during nighttime conditions in a single engine airplane, a total straight-line distance of more than 100 nautical miles from the original point of departure; and

(v) Three hours in a single engine airplane within 2 calendar months before the date of the practical test.

(4) For the airline transport pilot certificate, the course must include 25 hours flight training, including 15 hours of instrument training, in a single engine airplane on the areas of operation under part 141, appendix E, paragraph 4.(c). A flight simulator and flight training device cannot be used to meet more than 12.5 hours of the training requirements; and the use of the flight training device is limited to 6.25 hours of the 12.5 hours permitted.

(b) Course for an additional airplane category and multiengine class rating.

(1) For the private pilot certificate, the course requires 20 hours flight training on the areas of operations under part 141, appendix B, paragraph 4.(d)(2). A flight simulator and flight training device cannot be used more than 4 hours to meet the training requirements, and use of the flight training device is limited to 3 hours of the 4 hours permitted. The course must include—

(i) Three hours of cross country training in a multiengine airplane, except as provided under § 61.111 of this chapter;

(ii) Three hours of nighttime flight training in a multiengine airplane that includes one cross country flight of more than 100 nautical miles total distance, and 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport;

(iii) Three hours of flight training in a multiengine airplane on the control and maneuvering of a multiengine airplane solely by reference to instruments, including straight and level flight, constant airspeed climbs and descents, turns to a heading, recovery from unusual flight attitudes, radio communications, and the use of navigation systems/facilities and radar services appropriate to instrument flight; and

(iv) Three hours of flight training in a multiengine airplane in preparation for the practical test within 2 calendar months before the date of the test.

(2) For the commercial pilot certificate, the course requires 55 hours flight training on the areas of operations under part 141, appendix D, paragraph 4.(d)(2). A flight simulator and flight training device cannot be used more than 16.5 hours to meet the training requirements, and use of the flight training device is limited to 11 hours of the 16.5 hours permitted. The course must include—

(i) Five hours of instrument training in a multiengine airplane including training using a view-limiting device for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems;

(ii) Ten hours of training in a multiengine airplane that has retractable landing gear, flaps, and a controllable pitch propeller, or is turbine-powered;

(iii) One 2-hour cross country flight during daytime conditions in a multiengine airplane, and a total straight-line distance of more than 100 nautical miles from the original point of departure;

(iv) One 2-hour cross country flight during nighttime conditions in a multiengine airplane, and a total straight-line distance of more than 100 nautical miles from the original point of departure; and

(v) Three hours in a multiengine airplane within 2 calendar months before the date of the practical test.

(3) For the airline transport pilot certificate, the course requires 25 hours of flight training in a multiengine airplane on the areas of operation under part 141, appendix E, paragraph 4.(c) that includes 15 hours of instrument training. A flight simulator and flight training device cannot be used more than 12.5 hours to meet the training requirements, and use of the flight training device is limited to 6.25 hours of the 12.5 hours permitted.

(c) Course for an additional rotorcraft category and helicopter class rating.

(1) For the recreational pilot certificate, the course requires 15 hours of flight training on the areas of operations under part 141, appendix A, paragraph 4.(c)(2) that includes—

(i) Two hours of flight training to and at an airport that is located more than 25 nautical miles from the airport where the applicant normally trains, with three takeoffs and three landings, except as provided under § 61.100 of this chapter; and

(ii) Three hours of flight training in a rotorcraft category and a helicopter class aircraft within 2 calendar months before the date of the practical test.

(2) For the private pilot certificate, the course requires 20 hours flight training on the areas of operations under part 141, appendix B, paragraph 4.(d)(3). A flight simulator and flight training device cannot be used more than 4 hours to meet the training requirements, and use of the flight training device is limited to 3 hours of the 4 hours permitted. The course must include—

(i) Except as provided under § 61.111 of this chapter, 3 hours of cross country flight training in a helicopter;

(ii) Three hours of nighttime flight training in a helicopter that includes one cross country flight of more than 50 nautical miles total distance, and 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport; and

(iii) Three hours of flight training in a helicopter within 2 calendar months before the date of the practical test.

(3) The commercial pilot certificate level requires 30 hours flight training on the areas of operations under appendix D of part 141, paragraph 4.(d)(3). A flight simulator and flight training device cannot be used more than 9 hours to meet the training requirements, and use of the flight training device is limited to 6 hours of the 9 hours permitted. The course must include—

(i) Five hours on the control and maneuvering of a helicopter solely by reference to instruments, and must include training using a view-limiting device for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems. This aeronautical experience may be performed in an aircraft, flight simulator, flight training device, or an aviation training device;

(ii) One 2-hour cross country flight during daytime conditions in a helicopter, a total straight-line distance of more than 50 nautical miles from the original point of departure;

(iii) One 2-hour cross country flight during nighttime conditions in a helicopter, a total straight-line distance of more than 50 nautical miles from the original point of departure; and

(iv) Three hours in a helicopter within 2 calendar months before the date of the practical test.

(4) For the airline transport pilot certificate, the course requires 25 hours of flight training, including 15 hours of instrument training, in a helicopter on the areas of operation under part 141, appendix E, paragraph 4.(c). A flight simulator and flight training device cannot be used more than 12.5 hours to meet the training requirements, and use of the flight training device is limited to 6.25 hours of the 12.5 hours permitted.

(d) Course for an additional rotorcraft category and a gyroplane class rating.

(1) For the recreational pilot certificate, the course requires 15 hours flight training on the areas of operations under part 141, appendix A, paragraph 4.(c)(3) that includes—

(i) Two hours of flight training to and at an airport that is located more than 25 nautical miles from the airport where the applicant normally trains, with three takeoffs and three landings, except as provided under § 61.100 of this chapter; and

(ii) Three hours of flight training in a gyroplane class within 2 calendar months before the date of the practical test.

(2) For the private pilot certificate, the course requires 20 hours flight training on the areas of operations under part 141, appendix B, paragraph 4.(d)(4). A flight simulator and flight training device cannot be used more than 4 hours to meet the training requirements, and use of the flight training device is limited to 3 hours of the 4 hours permitted. The course must include—

(i) Three hours of cross country flight training in a gyroplane, except as provided under § 61.111 of this chapter;

(ii) Three hours of nighttime flight training in a gyroplane that includes one cross country flight of more than 50 nautical miles total distance, and 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport; and

(iii) Three hours of flight training in a gyroplane within 2 calendar months before the date of the practical test.

(3) For the commercial pilot certificate, the course requires 30 hours flight training on the areas of operations of appendix D to part 141, paragraph 4.(d)(4). A flight simulator and flight training device cannot be used more than 6 hours to meet the training requirements, and use of the flight training device is limited to 6 hours of the 9 hours permitted. The course must include—

(i) 2.5 hours on the control and maneuvering of a gyroplane solely by reference to instruments, and must include training using a view-limiting device for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems. This aeronautical experience may be performed in an aircraft, flight simulator, flight training device, or an aviation training device.

(ii) One 2-hour cross country flight during daytime conditions in a gyroplane, a total straight-line distance of more than 50 nautical miles from the original point of departure;

(iii) Two hours of flight training during nighttime conditions in a gyroplane at an airport, that includes 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern); and

(iv) Three hours in a gyroplane within 2 calendar months before the date of the practical test.

(e) Course for an additional lighter-than-air category and airship class rating.

(1) For the private pilot certificate, the course requires 20 hours of flight training on the areas of operation under part 141, appendix B, paragraph 4.(d)(7). A flight simulator and flight training device cannot be used more than 4 hours to meet the training requirements, and use of the flight training device is limited to 3 hours of the 4 hours permitted. The course must include—

(i) Three hours of cross country flight training in an airship, except as provided under § 61.111 of this chapter;

(ii) Three hours of nighttime flight training in an airship that includes one cross country flight of more than 25 nautical miles total distance and 5 takeoffs and 5 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport;

(iii) Three hours of flight training in an airship on the control and maneuvering of an airship solely by reference to instruments, including straight and level flight, constant airspeed climbs and descents, turns to a heading, recovery from unusual flight attitudes, radio communications, and the use of navigation systems/facilities and radar services appropriate to instrument flight; and

(iv) Three hours of flight training in an airship within 2 calendar months before the date of the practical test.

(2) For the commercial pilot certificate, the course requires 55 hours of flight training on the areas of operation under part 141, appendix D, paragraph 4.(d)(7). A flight simulator and flight training device cannot be used more than 16.5 hours to meet the training requirements, and use of the flight training device is limited to 11 hours of the 16.5 hours permitted. The course must include—

(i) Three hours of instrument training in an airship that must include training using a view-limiting device for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems;

(ii) One hour cross country flight during daytime conditions in an airship that consists of, a total straight-line distance of more than 25 nautical miles from the original point of departure;

(iii) One hour cross country flight during nighttime conditions in an airship that consists of a total straight-line distance of more than 25 nautical miles from the original point of departure; and

(iv) Three hours of flight training in an airship within 2 calendar months before the date of the practical test.

(f) Course for an additional lighter-than-air category and a gas balloon class rating.

(1) For the private pilot certificate, the course requires eight hours of flight training that includes 5 training flights on the areas of operations under part 141, appendix B, paragraph 4(d)(8). A flight simulator and flight training device cannot be used more than 1.6 hours to meet the training requirements, and use of the flight training device is limited to 1.2 hours of the 1.6 hours permitted. The course must include—

(i) Two flights of 1 hour each;

(ii) One flight involving a controlled ascent to 3,000 feet above the launch site; and

(iii) Two flights within 2 calendar months before the date of the practical test.

(2) For the commercial pilot certificate, the course requires 10 hours of flight training that includes eight training flights on the areas of operations under part 141, appendix D, paragraph 4(d)(8). A flight simulator and flight training device cannot be used more than 3 hours to meet the training requirements, and use of the flight training device is limited to 2 hours of the 3 hours permitted. The course must include—

(i) Two flights of 1 hour each;

(ii) One flight involving a controlled ascent to 5,000 feet above the launch site; and

(iii) Two flights within 2 calendar months before the date of the practical test.

(g) Course for an additional lighter-than-air category and a hot air balloon class rating.

(1) For the private pilot certificate, the course requires eight hours of flight training that includes 5 training flights on the areas of operations under part 141, appendix B, paragraph 4(d)(8). A flight simulator and flight training device cannot be used more than 1.6 hours to meet the training requirements, and use of the flight training device is limited to 1.2 hours of the 1.6 hours permitted. The course must include—

(i) Two flights of 30 minutes each;

(ii) One flight involving a controlled ascent to 2,000 feet above the launch site; and

(iii) Two flights within 2 calendar months before the date of the practical test.

(2) For the commercial pilot certificate, the course requires 10 hours of flight training that includes eight training flights on the areas of operation under part 141, appendix D, paragraph 4(d)(8). A flight simulator and flight training device cannot be used more than 3 hours to meet the training requirements, and use of the flight training device is limited to 2 hours of the 3 hours permitted. The course must include—

(i) Two flights of 30 minutes each;

(ii) One flight involving a controlled ascent to 3,000 feet above the launch site; and

(iii) Two flights within 2 calendar months before the date of the practical test.

(h) Course for an additional powered-lift category rating.

(1) For the private pilot certificate, the course requires 20 hours flight training on the areas of operations under part 141, appendix B, paragraph 4(d)(5). A flight simulator and flight training device cannot be used more than 4 hours to meet the training requirements, and use of the flight training device is limited to 3 hours of the 4 hours permitted. The course must include—

(i) Three hours of cross country flight training in a powered-lift except as provided under § 61.111 of this chapter;

(ii) Three hours of nighttime flight training in a powered-lift that includes one cross-country flight of more than 100 nautical miles total distance, and 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport;

(iii) Three hours of flight training in a powered-lift on the control and maneuvering of a powered-lift solely by reference to instruments, including straight and level flight, constant airspeed climbs and descents, turns to a heading, recovery from unusual flight attitudes, radio communications, and the use of navigation systems/facilities and radar services appropriate to instrument flight;

(iv) Three hours of flight training in a powered-lift within 2 calendar months before the date of the practical test.

(2) For the commercial pilot certificate, the course requires 55 hours flight training on the areas of operations under part 141, appendix D, paragraph 4(d)(5). A flight simulator and flight training device cannot be used more than 16.5 hours to meet the training requirements, and use of the flight training device is limited to 11 hours of the 16.5 hours permitted. The course includes—

(i) Five hours of instrument training in a powered-lift that must include training using a view-limiting device for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems;

(ii) One 2-hour cross country flight during daytime conditions in a powered-lift, a total straight-line distance of more than 100 nautical miles from the original point of departure;

(iii) One 2-hour cross country flight during nighttime conditions in a powered-lift, a total straight-line distance of more than 100 nautical miles from the original point of departure; and

(iv) Three hours of flight training in a powered-lift within 2 calendar months before the date of the practical test.

(3) For the airline transport pilot certificate, the course requires 25 hours flight training in a powered-lift on the areas of operation under part 141, appendix E, paragraph 4(c) that includes 15 hours of instrument training. A flight simulator and flight training device cannot be used more than 12.5 hours to meet the training requirements, and use of the flight training device is limited to 6.25 hours of the 12.5 hours permitted.

(i) Course for an additional glider category rating.

(1) For the private pilot certificate, the course requires 4 hours of flight training in a glider on the areas of operations under part 141, appendix B, paragraph 4(d)(6). A flight simulator and flight training device cannot be used more than 0.8 hours to meet the training requirements, and use of the flight training device is limited to 0.6 hours of the 0.8 hours permitted. The course must include—

(i) Five training flights in a glider with a certificated flight instructor on the launch/tow procedures approved for the course and on the appropriate approved areas of operation listed under appendix B, paragraph 4(d)(6) of this part; and

(ii) Three training flights in a glider with a certificated flight instructor within 2 calendar months before the date of the practical test.

(2) The commercial pilot certificate level requires 4 hours of flight training in a glider on the areas of operation under part 141, appendix D, paragraph 4.(d)(6). A flight simulator and flight training device cannot be used more than 0.8 hours to meet the training requirements, and use of the flight training device is limited to 0.6 hours of the 0.8 hours permitted. The course must include—

(j) Course for an airplane additional single engine class rating.

(1) For the private pilot certificate, the course requires 3 hours of flight training in the areas of operations under part 141, appendix B, paragraph 4.(d)(1). A flight simulator and flight training device cannot be used more than 0.6 hours to meet the training requirements, and use of the flight training device is limited to 0.4 hours of the 0.6 hours permitted. The course must include—

(i) Three hours of cross country training in a single engine airplane, except as provided under § 61.111 of this chapter;

(ii) Three hours of nighttime flight training in a single engine airplane that includes one cross country flight of more than 100 nautical miles total distance in a single engine airplane and 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport;

(iii) Three hours of flight training in a single engine airplane on the control and maneuvering of a single engine airplane solely by reference to instruments, including straight and level flight, constant airspeed climbs and descents, turns to a heading, recovery from unusual flight attitudes, radio communications, and the use of navigation systems/facilities and radar services appropriate to instrument flight; and

(iv) Three hours of flight training in a single engine airplane within 2 calendar months before the date of the practical test.

(2) For the commercial pilot certificate, the course requires 10 hours of flight training on the areas of operations under part 141, appendix D, paragraph 4.(d)(1).

(i) Five hours of instrument training in a single engine airplane that must include training using a view-limiting device for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems.

(ii) Ten hours of flight training in an airplane that has retractable landing gear, flaps, and a controllable pitch propeller, or is turbine-powered.

(iii) One 2-hour cross country flight during daytime conditions in a single engine airplane and a total straight-line distance of more than 100 nautical miles from the original point of departure;

(iv) One 2-hour cross country flight during nighttime conditions in a single engine airplane and a total straight-line distance of more than 100 nautical miles from the original point of departure; and

(v) Three hours of flight training in a single engine airplane within 2 calendar months before the date of the practical test.

(3) For the airline transport pilot certificate, the course requires 25 hours flight training in a single engine airplane on the areas of operation under appendix E to part 141, paragraph 4.(c), that includes 15 hours of instrument training. A flight simulator and flight training device cannot be used more than 12.5 hours to meet the training requirements, and use of the flight training device is limited to 6.25 hours of the 12.5 hours permitted.

(k) Course for an airplane additional multiengine class rating.

(1) For the private pilot certificate, the course requires 3 hours of flight training on the areas of operations of appendix B to part 141, paragraph 4(d)(2). A flight simulator and flight training device cannot be used more than 0.6 hours to meet the training requirements, and use of the flight training device is limited to 0.4 hours of the 0.6 hours permitted. The course must include—

(i) Three hours of cross country training in a multiengine airplane, except as provided under § 61.111 of this chapter;

(ii) Three hours of nighttime flight training in a multiengine airplane that includes one cross country flight of more than 100 nautical miles total distance in a multiengine airplane, and 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport;

(iii) Three hours of flight training in a multiengine airplane on the control and maneuvering of a multiengine airplane solely by reference to instruments, including straight and level flight, constant airspeed climbs and descents, turns to a heading, recovery from unusual flight attitudes, radio communications, and the use of navigation systems/facilities and radar services appropriate to instrument flight; and

(iv) Three hours of flight training in a multiengine airplane within 2 calendar months before the date of the practical test.

(2) For the commercial pilot certificate, the course requires 10 hours of training on the areas of operations under appendix D of part 141, paragraph 4(d)(2). A flight simulator and flight training device cannot be used more than 3 hours to meet the training requirements, and use of the flight training device is limited to 2 hours of the 3 hours permitted. The course must include—

(i) Five hours of instrument training in a multiengine airplane that must include training using a view-limiting device on for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems;

(ii) Ten hours of training in a multiengine airplane that has retractable landing gear, flaps, and a controllable pitch propeller, or is turbine-powered;

(iii) One 2-hour cross country flight during daytime conditions in a multiengine airplane and, a total straight-line distance of more than 100 nautical miles from the original point of departure;

(iv) One 2-hour cross country flight during nighttime conditions in a multiengine airplane and, a total straight-line distance of more than 100 nautical miles from the original point of departure; and

(iv) Three hours of flight training in a multiengine airplane within 2 calendar months before the date of the practical test.

(3) For the airline transport pilot certificate, the course requires 25 hours of training in a multiengine airplane on the areas of operation of appendix E to part 141, paragraph 4.(c) that includes 15 hours of instrument training. A flight simulator and flight training device cannot be used more than 12.5 hours to meet the training requirements, and use of the flight training device is limited to 6.25 hours of the 12.5 hours permitted.

(l) Course for a rotorcraft additional helicopter class rating.

(1) For the recreational pilot certificate, the course requires 3 hours of flight training on the areas of operations under appendix A of part 141, paragraph 4.(c)(2) that includes—

(i) Two hours of flight training to and at an airport that is located more than 25 nautical miles from the airport where the applicant normally trains, with three takeoffs and three landings, except as provided under § 61.100 of this chapter; and

(ii) Three hours of flight training in a helicopter within 2 calendar months before the date of the practical test.

(2) For the private pilot certificate, the course requires 3 hours flight training on the areas of operations under appendix B of part 141, paragraph 4.(d)(3). A flight simulator and flight training device cannot be used more than 0.6 hours to meet the training requirements, and use of the flight training device is limited to 0.4 hours of the 0.6 hours permitted. The course must include—

(i) Three hours of cross country training in a helicopter, except as provided under § 61.111 of this chapter;

(ii) Three hours of nighttime flight training in a helicopter that includes one cross country flight of more than 50 nautical miles total distance, and 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport; and

(iii) Three hours of flight training in a helicopter within 2 calendar months before the date of the practical test.

(3) For the commercial pilot certificate, the course requires 5 hours flight training on the areas of operations under appendix D of part 141, paragraph 4.(d)(3). Use of a flight simulator and flight training device in the approved training course cannot exceed 1 hour; however, use of the flight training device cannot exceed 0.7 of the one hour. The course must include—

(i) Five hours on the control and maneuvering of a helicopter solely by reference to instruments, and must include training using a view-limiting device for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems. This aeronautical experience may be performed in an aircraft, flight simulator, flight training device, or an aviation training device;

(ii) One 2-hour cross country flight during daytime conditions in a helicopter and, a total straight-line distance of more than 50 nautical miles from the original point of departure;

(iii) One 2-hour cross country flight during nighttime conditions in a helicopter and a total straight-line distance of more than 50 nautical miles from the original point of departure; and

(iv) Three hours of flight training in a helicopter within 2 calendar months before the date of the practical test.

(4) For the airline transport pilot certificate, the course requires 25 hours of flight training in a helicopter on the areas of operation under appendix E of part 141, paragraph 4.(c) that includes 15 hours of instrument training. A flight simulator and flight training device cannot be used more than 12.5 hours to meet the training requirements, and use of the flight training device is limited to 6.25 hours of the 12.5 hours permitted.

(m) Course for a rotorcraft additional gyroplane class rating.

(1) For the recreational pilot certificate, the course requires 3 hours flight training on the areas of operations of appendix A to part 141, paragraph 4.(c)(3) that includes—

(i) Except as provided under § 61.100 of this chapter, 2 hours of flight training to and at an airport that is located more than 25 nautical miles from the airport where the applicant normally trains, with three takeoffs and three landings; and

(ii) Within 2 calendar months before the date of the practical test, 3 hours of flight training in a gyroplane.

(2) For the private pilot certificate, the course requires 3 hours flight training on the areas of operations of appendix B to part 141, paragraph 4.(d)(4). A flight simulator and flight training device cannot be used more than 0.6 hours to meet the training requirements, and use of the flight training device is limited to 0.4 hours of the 0.6 hours permitted. The course must include—

(i) Three hours of cross country training in a gyroplane;

(ii) Three hours of nighttime flight training in a gyroplane that includes one cross country flight of more than 50 nautical miles total distance, and 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport; and

(iii) Three hours of flight training in a gyroplane within 2 calendar months before the date of the practical test.

(3) For the commercial pilot certificate, the course requires 5 hours flight training on the areas of operations of appendix D to part 141, paragraph 4.(d)(4). A flight simulator and flight training device cannot be used more than 1 hour to meet the training requirements, and use of the flight training device is limited to 0.7 hours of the 1 hour permitted. The course must include—

(i) 2.5 hours on the control and maneuvering of a gyroplane solely by reference to instruments, and must include training using a view-limiting device for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems. This aeronautical experience may be performed in an aircraft, flight simulator, flight training device, or an aviation training device.

(ii) Three hours of cross country flight training in a gyroplane, except as provided under § 61.111 of this chapter;

(iii) Two hours of flight training during nighttime conditions in a gyroplane at an airport that includes 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern); and

(iv) Three hours of flight training in a gyroplane within 2 calendar months before the date of the practical test.

(n) Course for a lighter-than-air additional airship class rating.

(1) For the private pilot certificate, the course requires 20 hours of flight training on the areas of operation under appendix B of part 141, paragraph 4.(d)(7). A flight simulator and flight training device cannot be used more than 4 hours to meet the training requirements, and use of the flight training device is limited to 3 hours of the 4 hours permitted. The course must include—

(i) Three hours of cross country training in an airship, except as provided under § 61.111 of this chapter;

(ii) Three hours of nighttime flight training in an airship that includes one cross country flight of more than 25 nautical miles total distance, and 5 takeoffs and 5 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport;

(iii) Three hours of flight training in an airship on the control and maneuvering of an airship solely by reference to instruments, including straight and level flight, constant airspeed climbs and descents, turns to a heading, recovery from unusual flight attitudes, radio communications, and the use of navigation systems/facilities and radar services appropriate to instrument flight; and

(iv) Three hours of flight training in an airship within 2 calendar months before the date of the practical test.

(2) For the commercial pilot certificate, the course requires 55 hours of flight training on the areas of operation under appendix D of part 141, paragraph 4.(d)(7). A flight simulator and flight training device cannot be used more than 16.5 hours to meet the training requirements, and use of the flight training device is limited to 11 hours of the 16.5 hours permitted. The course must include—

(i) Three hours of instrument training in an airship that must include training using a view-limiting device for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems;

(ii) One hour cross country flight during daytime conditions in an airship that consists of a total straight-line distance of more than 25 nautical miles from the original point of departure;

(iii) One hour cross country flight during nighttime conditions in an airship that consists of a total straight-line distance of more than 25 nautical miles from the original point of departure; and

(iv) Three hours of flight training in an airship within 2 calendar months before the date of the practical test.

(o) Course for a lighter-than-air additional gas balloon class rating.

(1) For the private pilot certificate, the course requires eight hours of flight training that includes 5 training flights on the areas of operations under appendix B of part 141, paragraph 4.(d)(8). A flight simulator and flight training device cannot be used more than 1.6 hours to meet the training requirements, and use of the flight training device is limited to 1.2 hours of the 1.6 hours permitted. The course must include—

(i) Two flights of 1 hour each;

(ii) One flight involving a controlled ascent to 3,000 feet above the launch site; and

(iii) Two flights within 2 calendar months before the date of the practical test.

(2) For the commercial pilot certificate, the course requires 10 hours of flight training that includes eight training flights on the areas of operations of appendix D to part 141, paragraph 4.(d)(8). A flight simulator and flight training device cannot be used more than 3 hours to meet the training requirements, and use of the flight training device is limited to 2 hours of the 3 hours permitted. The course must include—

(i) Two flights of 1 hour each;

(ii) One flight involving a controlled ascent to 5,000 feet above the launch site; and

(iii) Two flights within 2 calendar months before the date of the practical test.

(p) Course for a lighter-than-air additional hot air balloon class rating.

(1) For the private pilot certificate, the course requires 8 hours of flight training that includes 5 training flights on the areas of operations of appendix B to part 141, paragraph 4.(d)(8). A flight simulator and flight training device cannot be used more than 1.6 hours to meet the training requirements, and use of the flight training device is limited to 1.2 hours of the 1.6 hours permitted. The course must include—

(i) Two flights of 30 minutes each;

(ii) One flight involving a controlled ascent to 2,000 feet above the launch site; and

(iii) Two flights within 2 calendar months before the date of the practical test.

(2) For the commercial pilot certificate, the course requires 10 hours of flight training that includes eight training flight on the areas of operation of appendix D to part 141, paragraph 4.(d)(8). A flight simulator and flight training device cannot be used more than 3 hours to meet the training requirements, and use of the flight training

device is limited to 2 hours of the 3 hours permitted. The course must include—

(i) Two flights of 30 minutes each.

(ii) One flight involving a controlled ascent to 3,000 feet above the launch site; and

(iii) Two flights within 2 calendar months before the date of the practical test.

* * * * *

Issued in Washington, DC, on August 5, 2009.

J. Randolph Babbitt,

Administrator.

[FR Doc. E9–19353 Filed 8–20–09; 8:45 am]

BILLING CODE 4910–13–P

Reader Aids

Federal Register

Vol. 74, No. 161

Friday, August 21, 2009

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, AUGUST

38323–38502 3
38503–38884 4
38885–39210 5
39211–39534 6
39535–39870 7
39871–40056 10
40057–40470 11
40471–40718 12
40719–41032 13
41033–41326 14
41327–41580 17
41581–41786 18
41787–42024 19
42025–42168 20
42169–42572 21

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Presidential Determinations:
Presidential Determination 2009–23 of July 8, 2009 41787
Memorandums:
Memorandum of July 30, 2009 38885
Memorandum of August 5, 2009 39871
Memorandum of August 6, 2009 40055
Notices:
Notice of August 13, 2009 41325

4 CFR

202 38503

Proposed Rules:
200 38363
201 38366

5 CFR

300 40057
315 40471
316 40471
532 42169

6 CFR

5 38887

7 CFR

6 41033
210 38889
925 38323
932 38324
944 38323
948 38504
959 38505
1205 39211
1415 42170
1436 41581

Proposed Rules:
761 39565
766 39565
983 39230
1493 39240

8 CFR

Proposed Rules:
274a 41801

9 CFR

145 38326

10 CFR

26 38326
50 38890
72 40060

Proposed Rules:
31 38372
50 ..... 38987, 40006, 40765
52 40006
110 41096
609 39569

11 CFR

111 39535

12 CFR

226 ..... 40477, 41194
308 40478
363 40478
619 40060
620 40060
621 40060
1229 38508
1282 39873
1291 38514

Proposed Rules:
914 38559
985 38564
989 38564
1235 38559
1273 38564
1274 38564
1282 38572
1732 38559

13 CFR

313 41592
315 41592

14 CFR

25 ..... 38328, 40479, 40482
39 ..... 38340, 38894, 38896, 38899, 38901, 38903, 38905, 38910, 38912, 40061, 40484, 41327, 41603, 41605, 41607, 41611
61 42500
71 ..... 40065, 40066, 40067
91 ..... 42174, 42500
95 40488
97 ..... 40719, 40721, 41613, 41615
121 42174
125 42174
135 38522
141 42500

Proposed Rules:
1 41522
21 39242
23 41522
39 ..... 38381, 38988, 38991, 38993, 38995, 38999, 39243, 39582, 40525, 40527, 40529, 40776, 40778, 40781, 41096, 41642, 41805, 41807, 41810, 41813
71 ..... 39001, 39002, 39908, 40534, 40535

15 CFR

30.....38914
801.....41035
Proposed Rules:
742.....40117
774.....40117

16 CFR

317.....40686
1500.....39535
Proposed Rules:
310.....41988
425.....40121
1112.....40784

17 CFR

7.....39211
200.....40068
232.....38523
248.....40398
Proposed Rules:
190.....40794
242.....42033
275.....39840

18 CFR

385.....41037
Proposed Rules:
410.....41100

20 CFR

10.....41617
Proposed Rules:
618.....39198
652.....41815
661.....41815
662.....41815
663.....41815
664.....41815
667.....41815

21 CFR

2.....40069
312.....40872, 40900
316.....40900
510.....38341
524.....38341
558.....40723, 41631
601.....42175
872.....38686
Proposed Rules:
310.....42184
314.....42184
600.....42184
803.....42203
1308.....42217

22 CFR

123.....38342, 39212
124.....38342
126.....38342
129.....38342

25 CFR

26.....41328
27.....41328

26 CFR

1.....38830
31.....38830
602.....38830
Proposed Rules:
301.....39003

28 CFR

Proposed Rules:
58.....41101

29 CFR

1612.....42025
1910.....40442
4022.....41039
Proposed Rules:
471.....38488
1910.....40450

30 CFR

250.....40069
251.....40726
Proposed Rules:
926.....40537, 40799

33 CFR

100 .....38524, 39213, 40731
117 .....41632, 41789, 41790
147.....38524
165 .....38524, 38530, 38916, 38918, 39216, 40734, 41040, 41043, 41045, 41334, 42026
Proposed Rules:
117 .....40802, 41816, 42037
165 .....39247, 39584, 42220
168.....41646

34 CFR

371.....40495
Proposed Rules:
600.....39498, 42380
602.....39498
668.....42380
675.....42380
686.....42380
690.....42380
692.....42380

36 CFR

223.....40736
1012.....42028

37 CFR

201.....39900
351.....38532

38 CFR

Proposed Rules:
1.....39589
4.....39591

39 CFR

3020 .....38921, 40708, 40714, 41047, 41051, 41336, 41633, 41791
Proposed Rules:
111.....38383
3020.....38533
3050.....39909

40 CFR

50.....40074
51.....40074
52 .....38536, 40083, 40745, 40747, 40750, 41340, 41637
55.....40498, 42175
62.....38344, 38346
141.....38348
174.....39540
180 .....38924, 38935, 38945, 38952, 38956, 38962, 38970, 39543, 39545, 40503, 40509, 40513, 40753, 41794
271.....40518
300.....40085, 41341
721.....42177
Proposed Rules:
52 .....39007, 39592, 40122, 40123, 40804, 40805, 41104, 41357, 41648, 41818, 41826, 41829, 42038
62.....38384, 38385
63.....39013
80.....41359
96.....39592
211.....39150, 42223
271.....40539
300.....40123, 41361

41 CFR

102-36.....41060

42 CFR

405.....39384
412.....39762
418.....39384
483.....40288
Proposed Rules:
73.....41829
409.....39436, 40948
410.....39032
411.....39032
414.....39032
415.....39032
424.....39436, 40948
484.....39436, 40948
485.....39032
489.....39436, 40948

44 CFR

64.....38358, 41056
Proposed Rules:
67.....38386
206.....40124

46 CFR

10.....39218
11.....39218
Proposed Rules:
535.....41831

47 CFR

1.....39219, 40089
63.....39551
73 .....39228, 41059, 41798, 41799
Proposed Rules:
2.....39249
73 .....38388, 38389, 39529, 39260, 39261, 40806, 41106, 41831, 41832, 42043
95.....39249

48 CFR

Ch. 1.....40458, 40468
4.....40463
5.....40459
7.....40459
15.....40463
22.....40460, 40461
25.....40461, 40463
28.....40466
30.....40467
32.....40468
52 .....40460, 40461, 40463, 40466, 40467, 40468
501.....41060
502.....39563
519.....41060
552.....41060
3025.....41346
3052.....41346
Proposed Rules:
2.....39262, 40131
4 .....39262, 40131, 42044
12.....40131
15.....39262
25.....39597
39.....40131
42.....39262, 42044
45.....39262
52 .....39262, 40131, 42044

49 CFR

89.....40521
501.....41067
571.....40760
593.....41068
599.....38974
Proposed Rules:
213.....41558
237.....41558
544.....41362

50 CFR

17.....40132
20.....40138
25.....41351
32.....41351
226.....39903
300.....38544
648.....39229
679 .....38558, 38985, 40523, 41080, 42178
680.....41092
Proposed Rules:
17 .....39268, 40540, 40650, 41649, 41662, 41832
20.....39598, 41008
229.....39910, 39914
218.....40560
300.....39032, 39269
600.....39914
635.....39032, 39914

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 838/P.L. 111–48
Miami Dade College Land Conveyance Act (Aug. 12, 2009; 123 Stat. 1974)

S. 1107/P.L. 111–49
Judicial Survivors Protection Act of 2009 (Aug. 12, 2009; 123 Stat. 1976)

Last List August 11, 2009

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.